

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

REDDY VIJAY ANNAPPAREDDY)
Plaintiff,) Trial Day 7
vs.) Civil No.
PAM ARNOLD, et al.) 18-cv-3012-JFA
Defendants.) Baltimore, Maryland
June 12, 2023
9:01 a.m.

THE ABOVE-ENTITLED MATTER CONTINUED FOR
BENCH TRIAL
BEFORE THE HONORABLE JOSEPH F. ANDERSON, JR.

A P P E A R A N C E S

On Behalf of the Plaintiff:

JOSHUA D. GREENBERG, ESQUIRE
KOBIE FLOWERS, ESQUIRE

On Behalf of the Defendant United States of America:

MATTHEW P. PHELPS, ESQUIRE
MOLISSA H. FARBER, ESQUIRE
LAWRENCE EISER, ESQUIRE

Also Present:

Reddy Vijay Annappareddy

(Computer-aided transcription of stenotype notes)

Reported by:

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Federal Official Reporter
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William Fassett

Direct by Mr. Greenberg

Cross by Mr. Eiser

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Sandra Wilkinson

Direct by Mr. Greenberg

Cross by Ms. Farber

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1 (9:01 a.m.)

2 **THE COURT:** Good morning. Please be seated.

3 All right. We've got a few developments since last week.
4 I understand that Ms. Wilkinson is now available today, and we
5 also have the Plaintiff's pharmacy expert today.

6 Late last night, we received the Plaintiff's brief on
7 rebuttal issues. The Government has not had a chance to
8 respond, so I'd rather not address that first thing. Let's
9 move ahead with these witnesses and get them up, and then
10 today, if we can, and then we'll discuss these others matters.

11 All right. Please call your next witness.

12 **MR. GREENBERG:** Judge Anderson, Plaintiff Vijay
13 Annappareddy calls Professor William Fassett.

14 **THE CLERK:** Sir. Please remain standing and raise
15 your right hand.

16 (Witness sworn.)

17 **THE CLERK:** You may be seated, sir.

18 For the record, could you please state and spell your
19 first and last name.

20 **THE WITNESS:** It's William Fassett. F-A-S-S-E-T-T.
21 First name W-I-L-L-I-A-M.

22 - - -

23 **DIRECT EXAMINATION**

24 - - -

25 **BY MR. GREENBERG:**

1 Q. Good morning, Professor Fassett. How are you today?

2 A. Fine. Thank you.

3 Q. You came in here just last night, correct?

4 A. That's correct.

5 Q. Where did you come from?

6 A. I came from Spokane, Washington.

7 Q. What, if anything, do you do for your occupation in
8 Spokane, Washington?

9 A. Well, I am professor emeritus of pharmacy at Washington
10 State University where I served as dean and professor until
11 2014, when I became professor emeritus.

12 Q. And Professor Fassett, can you please give Judge Anderson
13 an overview of your career at the pharmacy industry, including
14 your teaching experience and professor work.

15 A. Yes, sir. I have been licensed to practice in the state
16 of Washington since 1969, continuously. Up until 1980, I
17 practiced primarily community pharmacy in several settings. I
18 managed a community pharmacy during that period of time. And
19 in 1980, I joined the faculty at University of Washington and
20 stayed in academia until I retired.

21 From -- during my academic career, I taught pharmacy
22 practice, prescription processing, pharmacy information systems
23 management, and later in my career, pharmacy law and ethics.

24 From 1980 to 1999, at both University of Washington and at
25 Drake University, on weekends or sometimes in the summer, I

1 continued to practice part-time pharmacy primarily in community
2 settings.

3 From '99 to 2005, I was dean of pharmacy at Washington
4 State University, and during that time, I did not practice in
5 community pharmacies, just didn't have the time.

6 But in 2006 and '07, during the summers, I did practice,
7 again, primarily in community pharmacies.

8 And then up until 2015, I was also the consulting
9 pharmacist for Hollister-Stier Laboratories where I reviewed
10 prescriptions that were being dispensed to patients for allergy
11 treatment and approved them before they were shipped by the
12 manufacturer.

13 Q. Professor Fassett, for about how many years have you
14 worked in the pharmacy industry in one way or the other or
15 multiple ways?

16 A. Well, actually, I started in high school cleaning up a
17 pharmacy. So I started in pharmacy in high school, 1962. So
18 it's been 61 years, I guess.

19 Q. And at what point in time, if any, Professor Fassett, did
20 you get your pharmacist degree?

21 A. 1969. And, subsequently, degrees in business
22 administration and leadership and policy studies.

23 Q. And at what point in time, if any, Professor Fassett, did
24 you obtain your pharmacist license?

25 A. 1969.

1 Q. And to what extent, if any, have you maintained that
2 license through the present?

3 A. I'm still licensed as a pharmacist.

4 Q. Professor Fassett, in addition to the experience and the
5 types of work that you've described, to what extent, if any,
6 have you held any position or done any work with the American
7 Society for Pharmacy Law?

8 A. Well, I served as the organization's treasurer for about
9 10 years, and I had -- currently am the editorial director for
10 that organization. I edit their two publications, which
11 includes a monthly newsletter and a six-times-a-year journal.

12 Q. And to what extent, if any, Professor Fassett, you have
13 authored publications related to pharmacy issues?

14 A. I've got a hundred or so publications on issues ranging
15 from pharmaceutical returns to compliance to computer
16 applications in pharmacy. I wrote a book on that. And those
17 were -- and the effect of pharmacist interventions to save drug
18 misadventures.

19 Then I have, for the last 15 years or so, written the next
20 major textbook on Washington pharmacy law.

21 Q. Professor Fassett, in your experience over the past
22 50-plus years, to what extent, if any, are standards of care in
23 the pharmacy industry applicable nationwide?

24 A. There's a national standard of care. It was formally,
25 really, enunciated in the early 1970s by the American

1 Pharmacist Association. The expected duties that a pharmacist
2 owes to a patient and the responsibilities involved in assuring
3 safe and effective drug therapy are truly nationwide and are
4 taught uniformly throughout the pharmacy programs because
5 there's a uniformed national accredited curriculum.

6 Q. Now, Professor Fassett, your opinions have been the
7 subject of some pretrial motions practice, so we're just going
8 to focus on maybe one or two categories, all right?

9 A. That's fine.

10 Q. Now, in this case, your assignment has been limited to
11 offering an opinion for a certain period of time; is that
12 right?

13 A. That's correct.

14 Q. Or opinions, I should say, for a certain period of time.
15 And what is that period of time?

16 A. Well, if I recall, it's roughly 2006 to 2013, if I
17 remember correctly.

18 Q. Is it all right with you if I mirror your report and at
19 least sometimes refer to that period as "the relevant period"?

20 A. That would be fine.

21 Q. Okay. I want to focus on -- turn to, at least -- your
22 opinions on -- relating to prescription software systems. And,
23 in particular, the generation of extra prescription labels.

24 Based on your experience and expertise, Professor Fassett,
25 during the relevant period, 2006 to 2013, to what extent, if

1 any, were prescription processing software systems used by
2 pharmacies designed to allow multiple labels to be printed?

3 A. Well, during that period, virtually all pharmacies used
4 prescription processing software. And all of the major systems
5 that were designed typically printed multiple -- printed a
6 single -- they were designed to print a single sheet of paper.
7 And on that paper would be preprinted with stickers, if you
8 will, with various labels. And there would be multiple items
9 on that one sheet, including at least two copies of the
10 prescription label information.

11 There would be receipts. There would be a record of the
12 insurance adjudication. There would typically be a sticker
13 that would be placed in a signature log for when the
14 prescription is received. And then it would also print off to
15 be given to the patient. If that information was longer than
16 one page, then the printer would print a second page using a
17 paper from a different drawer in the printer.

18 But that was characteristic of virtually every system that
19 was out there.

20 Q. So if I heard you correctly, Professor Fassett, there
21 would be at least two copies of a prescription label printed
22 among the various items you described, right?

23 A. Typically, there would be two copies containing the
24 information on the label; that's correct.

25 Q. To what extent, if any -- let me back up, Professor

1 Fasset.

2 Can you please name some of the more common prescription
3 processing software systems that were used during the relevant
4 period?

5 A. Well, during that period, I think some -- the three major
6 wholesalers all had their own system. And, as I sit here, I
7 don't recall the names of what they called them. But McKesson
8 and Amerisource Bergen had their own systems, and then there
9 were other companies that developed them. Three major players
10 during that period of time were Cerner, Prime, and a company
11 called RX30.

12 Q. So three of the major ones, if I heard you correctly,
13 Professor Fasset, were Cerner, PrimeRX and RX30?

14 A. As I recall, yes.

15 MR. GREENBERG: Judge Anderson, I think this may have
16 been covered at the pretrial conference, but just in case it
17 wasn't, as a formality, I'll move to admit Professor Fasset as
18 an expert in the pharmacy issues in which he's testifying.

19 THE COURT: Any objection as to qualifications?

20 MR. EISER: No, Your Honor. Our motion was focused on
21 the fact that he hasn't connected any of his opinions to the
22 facts in this case.

23 THE COURT: All right.

24 Well, you may proceed under Rule 702 of the Rules of
25 Evidence.

1 **MR. GREENBERG:** Thank you, Your Honor.

2 **BY MR. GREENBERG:**

3 **Q.** Professor Fassett, to what extent, if any, does the
4 printing of a label tell you whether or not a claim was
5 submitted on or about the date that the label is printed? If
6 you don't understand the question, I can rephrase it.

7 **A.** Yes, please.

8 **Q.** Let's sort of back up. Can you explain for Judge Anderson
9 the connection, if any, between printing a label and submitting
10 a claim for a prescription?

11 **A.** They -- the process of submitting a claim to a third-party
12 payor during the relevant period very often involved a
13 pre-submission to determine whether the patient or beneficiary
14 was eligible, and that would often occur at the same time that
15 the technician was processing the prescription and printing out
16 the label.

17 If the claim was rejected and had to be resubmitted, then
18 that label that was printed out wouldn't reflect the completion
19 of a claim or even necessarily the delivery of a prescription.

20 Does that answer your question?

21 **Q.** I think at least in part, but let me sort of try to
22 clarify something.

23 Professor Fassett, can you please explain to
24 Judge Anderson to what extent, if any, from the period 2006 to
25 2013, if a claim was reversed, would or would not a label be

1 printed for that reason?

2 A. Well, it might. It might if the claim was reversed
3 because a particular -- for example, if a brand name drug was
4 not covered, they would reverse the claim, and then they would
5 submit a new claim for a generic version of the drug. And if
6 that were approved, they would then generate a new label, and
7 the original label that was printed would be discarded.

8 Q. Is it accurate or not, Professor Fassett, in your opinion,
9 that the mere fact that a label was printed does not tell you
10 whether or not a claim was submitted?

11 MR. EISER: Objection, leading.

12 THE COURT: Overruled.

13 THE WITNESS: Could you repeat the question.

14 MR. GREENBERG: Could the court reporter please read
15 back the question.

16 (Reporter read back as requested.)

17 THE WITNESS: That's correct.

18 BY MR. GREENBERG:

19 Q. Professor Fassett, I want to circle back briefly to what
20 you said a few minutes ago about the different items that are
21 printed by the types of prescription software, processing
22 software systems you mentioned. Okay?

23 To what extent, if any, would there be an extra copy of a
24 label, in your experience, from the very start, meaning there
25 could be one extra for the prescription bottle or one for other

1 reasons, from the very start?

2 A. There would be several situations. One of the more common
3 ones would be if the prescription required more than one
4 container. Another would be if they were doing blister packs,
5 or sometimes called bubble packs, where the patient's
6 medications are divided into four or more containers. Another
7 would be when robots -- a robotic processor is filling some of
8 the prescriptions in the pharmacy.

9 Q. Professor Fassett, can you please explain to
10 Judge Anderson what a bubble pack is, or a blister pack, and
11 whether they're the same thing?

12 A. When they first came out, they were sometimes called bingo
13 cards, because they're a card with rows of -- rows of blisters
14 that the individual pills are put in. And one of the systems
15 would do a card for every day of the week, with the medication
16 on it. And if you did a month's supply, you would have four
17 cards, one more each week, with one line for every day of the
18 week. And they were cardboard backing and a top with little
19 plastic bubble, blisters.

20 Q. What is the purpose, Professor Fassett, or what was the
21 purpose during 2006, 2013 of putting prescriptions in bubble
22 packs?

23 A. To make it -- to help encourage the patient to make sure
24 that they get their medication exactly all the time and when
25 it's ordered. Encourage what's sometimes called compliance or

1 called adherence to therapy.

2 **Q.** Going back to the printing of the various items that you
3 talked about, you explained to Judge Anderson the different
4 types of items. In your experience, Professor Fassett, to what
5 extent, if any, would there sometimes be an extra label from
6 the very start for the prescription itself that was never used?

7 **A.** Well, anytime that you -- so since every time you printed
8 one sheet you printed a couple copies of the label or the label
9 information, the purpose of having two on the first sheet is
10 that one would go on the prescription container, and the other
11 would typically be put onto the back of the hard copy of the
12 doctor's order to show what was actually printed during that
13 period of time. That was the most common use.

14 Now, if you had two bottles and you needed a second label,
15 then to put a label on the second bottle, you would end up
16 printing two more copies of the label. That would be one
17 example.

18 **THE COURT:** Dr. Fassett, let me interrupt you. I want
19 to be sure I understood what you said.

20 The first reason you might have two was one would go on
21 the container of the pill bottle, and one would go on the back
22 of the hard copy of the doctor's order?

23 **THE WITNESS:** Yes, the prescription.

24 **THE COURT:** And that would be maintained with the
25 pharmacy, that second one would?

1 **THE WITNESS:** Yes, Your Honor.

2 **THE COURT:** All right. Go ahead.

3 **BY MR. GREENBERG:**

4 **Q.** Professor Fassett, to what extent, if any, based on your
5 experience, could someone who had access to the prescription
6 processing software print an extra set of all these items,
7 including the extra labels, from the very start?

8 **A.** Anybody who was signed into the computer in a busy
9 pharmacy would have access to be able to print what's called a
10 label -- they would call it a "label only," which would
11 generate the label without processing a prescription. And
12 anybody who had access to that computer could do it at any time
13 that they were -- had access to the computer.

14 **Q.** All right. Thank you for that, Professor Fassett.

15 I want to come back to the label-only function. You have
16 identified some reasons -- Professor Fassett, you've identified
17 some reasons why extra copies of labels could be printed even
18 at the outset. I want to now turn to reasons -- well,
19 actually, you've talked about --

20 (Interruption.)

21 **THE COURT:** Sorry for that interruption. Go ahead.

22 **BY MR. GREENBERG:**

23 **Q.** All right. Professor Fassett, in addition to the -- we've
24 covered printing labels at the very start of sort of the
25 process with the different items. You've talked some about

1 blister packs, which are the same as bubble packs.

2 What other reasons, in your experience, Professor Fassett,
3 would or could extra labels be printed during 2006, 2013?

4 A. Well, during that time period, they were -- very often
5 used fax machines to request refills from providers. That was
6 starting to become more common than calling the physician's
7 office. And one common use of them was to take a copy of the
8 label and put it on the fax form and then fax that to the
9 physician's office, rather than handwrite all the
10 information --

11 Q. I'm sorry to interrupt you but just so we're clear, for
12 what purpose would the label be put on the fax?

13 A. It would be a way of communicating to the prescriber both
14 the -- all the elements of the prescription, the name of the
15 patient, the name of the drug, and the directions and the
16 quantity, instead of having to somehow handwrite that in.

17 Q. And this is to communicate for the purpose of requesting a
18 refill?

19 A. Requesting a refill or providing information to the
20 physician's office when they call and say -- want that, yes.

21 Q. And, Professor Fassett, you had mentioned earlier
22 something about a robot. To what extent, if any, would extra
23 labels be printed at pharmacies that used a dispensing robot,
24 such as ScriptPro?

25 A. Well, the ScriptPro system was designed so that from the

1 start to the finish it filled the container and applied the
2 label at the time that the container was filled before it got
3 out to be checked by the pharmacy and dispensed to the patient.
4 And for that purpose, it obviously had to have its own label
5 printer. So it would print a copy of the label. But the rest
6 of the information that was needed, including the information
7 to go to the patient, would have been printed on that single
8 sheet. So you would have at least two copies of the label.
9 The sheet that would go to the patient with the information,
10 typically, the part with the labels and stuff would be torn off
11 and discarded.

12 **Q.** And, Professor Fassett, based on your experience, to what
13 extent, if any, would or could extra labels for prescription be
14 printed after the date that a prescription was filled and
15 received by the patient?

16 **A.** They would be printed any time you needed to reprint -- to
17 reprint any of the pieces that were on that sheet. So one
18 example might be that -- claim -- you've got a list of your
19 claims back from the payor, and you look and you see that one
20 claim was paid for what you thought was billed incorrectly. It
21 wasn't uncommon in those days to print off the copy of the
22 prescription and hand it to the person in the pharmacy that
23 handled the claims with a note saying, "Please check this."

24 So they were used for internal purposes like that.

25 And another common one would be a patient said, "Could I

1 get an extra container to carry with me?" I know it was real
2 common in the pharmacies that I worked in that patients would
3 be traveling out of the country, and they wanted to take their
4 entire month's supply of medication with them. But in most
5 countries, you need to have a container that has the original
6 prescription label on it if you want to avoid having your drugs
7 confiscated, as opposed to just carrying them in a little
8 baggy.

9 Somebody might want an extra copy of their receipt for
10 that prescription, or there might be a need for an extra copy
11 of the patient information.

12 Anytime there was a need anywhere in the pharmacy for a
13 record of that prescription without issuing -- without actually
14 processing a claim or filling another supply, they would print
15 that sheet off.

16 **Q.** Okay. And I want to circle back later, again, to the
17 situations where extra labels can be printed after the date a
18 prescription was received by the patient.

19 But going back to on the day a prescription was either
20 billed or filled or received, to what extent, if any, was it
21 common, in your experience, Professor Fassett, during the
22 relevant period for an extra label to be printed because at
23 least one prescription per patient was refrigerated?

24 **A.** Well, that's -- yes, that would be pretty common in that
25 you would have -- you would have most of the patient's

1 prescriptions put in one container, one bag, for them to pick
2 up, but you would have to store them -- refrigerated
3 prescription in a refrigerator. So you'd print off another
4 copy of the label and put a note on it and say "refrigerator."
5 You would stick that -- typically, that note or something would
6 be stuck on the outside of the bag that was going to be storing
7 the drug until the patient picked it up or perhaps on the
8 delivery bag.

9 Q. And what was the purpose, Professor Fassett, during the
10 relevant period of putting an extra label copy on the
11 refrigerated medication?

12 A. Well, to direct the person that's delivering, the
13 technician or the delivery person, to make sure that they went
14 to the refrigerator to get that medication.

15 Q. And would that -- to what extent if any, would that also
16 alert whoever was delivering the prescription that there would
17 be one or more other medications in a different location?

18 A. Well, that would be the purpose, yes.

19 Q. Going back to the topic of bubble packs. To what extent,
20 if any, in your experience, Professor Fassett, during 2006 to
21 2013, might a patient have more than one bubble pack even just
22 for the morning or even just for the night?

23 A. Well, it depended on the system. For some patients, if
24 they didn't have a very large number of medications, if they
25 only had one or two, you could fit them in a blister and you

1 could make it so that all of the meds that they took on Monday
2 morning were in the blister for Monday morning, and all the
3 ones at noon were for Monday noon, and all the ones for Monday
4 dinner were for Monday dinner and so on.

5 If they had more drugs, you couldn't do that and so you
6 have might have a card for each drug.

7 And then if you had a card for each drug, it would
8 typically -- if it was delivered to a patient, it was typically
9 a week's card. And in nursing home settings, they would have
10 multiple cards that would be a month's supply on the container
11 of one drug.

12 So they would sort of select the right packaging to meet
13 the needs of that particular patient. But very often, a
14 month's supply, which is the typical amount the insurance pays
15 for, would require more than one card.

16 Q. So for patients with several co-morbidities or several
17 serious conditions, let's say HIV, hepatitis C, diabetes, high
18 blood pressure, cancer, psychiatric conditions, or some
19 combination of those or others, a single patient could have two
20 or three bubble packs just in the morning, right?

21 A. Yes. That's probably an example. There's transplant
22 patients who have as many as 20 pills a day.

23 Q. In patients with substance abuse issues who, because their
24 substance abuse contracted HIV and hepatitis C and then they're
25 also having a poor diet, so they have diabetes and high blood

1 pressure and they have heart conditions, that would be another
2 example where a patient might need two or more bubble packs
3 just in the morning, right?

4 A. Unfortunately, yes.

5 Q. Now, I want to go back to the -- well, I guess we're still
6 on the same general topic, but I want to go back to sort of the
7 timing issue about prescription processing software allowing
8 extra labels to be printed after the date of dispensing or
9 after the date of prescription was received. Okay?

10 A. Yes.

11 Q. To what extent, if any, Professor Fassett, was another
12 reason that could happen or would happen is when a processee
13 [sic] resubmitted a claim to a payor or readjudicated a claim?

14 A. I thought I mentioned that.

15 But one -- just one example of that is if somebody has a
16 prescription for a generic medication, that medication is
17 available from multiple different manufacturers. So in my
18 experience, it's not uncommon the prescription order comes in,
19 the technician prints off all of the material, gets ready to
20 fill the prescription and discovers that they don't have enough
21 to fill it and the new bottle, the new source is from a
22 different manufacturer.

23 And the insurers require that you tell them the exact
24 manufacturer of each product that you use, using something
25 called the National Drug Code.

1 So if, in fact, the prescription -- the medication that
2 had arrived from the wholesaler is a different manufacturer
3 than what it says on the label, you have to reverse that claim,
4 put in the different National Drug Code into the claim,
5 resubmit it. In part, because based on that National Drug
6 Code, the amount of reimbursement and the cost to the pharmacy
7 may be different. So at that point, the previous sheet that's
8 been printed off would be discarded, and the new label with the
9 proper National Drug Code would be -- would be there.

10 And that's also important for the patient because, at that
11 point, that recognizes that they -- it also recognizes that
12 their medication may look a little different than it did
13 before. And we've all seen those stickers on our medications
14 that say -- it looks different, but it's the same thing.

15 **Q.** Professor Fassett, based on your experience, during the
16 relevant period, again, meaning 2006 through 2013, I believe
17 you said that anyone with access to the prescription processing
18 software at a pharmacy could print an extra label; did I hear
19 you correctly? That was earlier.

20 **A.** That was -- yeah, by experience was that anybody who had
21 access to the computer would need access because reprinting --
22 reprinting stuff was so ubiquitous during the day that you
23 just -- you just needed everybody to have access to it.

24 **Q.** In your opinion, Professor Fassett, based on your
25 experience as well, because extra labels printing was so

1 ubiquitous, as you put it, management of pharmacies didn't
2 track every time or even any time particularly when someone
3 printed an extra label, right?

4 A. In my experience during that time period, that was not
5 something that people paid a lot of attention to. It was not
6 something people paid a lot of attention to.

7 Q. To what extent, if any, Professor Fassett, would
8 management of a pharmacy during the relevant period, in your
9 opinion and based on your experience, track the use of the
10 label-only function absent a specific reason to do so?

11 A. I don't recall ever -- even in my own management practice,
12 I don't recall ever having paid any attention to that during
13 that time period.

14 Q. And your experience, am I correct in inferring, that is --
15 it reflects what is typical in the pharmacy industry based on
16 your experience as well?

17 A. Yes.

18 Q. And to what extent, if any, would the prescription
19 processing software system itself keep a record of when or
20 whether someone printed an extra label after the patient
21 received the prescription?

22 A. As it turns out, every computer keeps a hidden log of
23 everything that's done on that computer, and these are often
24 used forensically. But to get access to that requires real
25 expertise that most users don't have. Even in large chains, in

1 my experience, to get access to the minute-by-minute activities
2 of the computer requires a special request to the IT
3 department.

4 Q. So to kind of sum up this sort of topic, am I correct in
5 understanding you, Professor Fassett, that during 2006 through
6 2013, pharmacy management would have -- typically have no
7 reason or way of knowing when or whether an extra label was
8 printed for any particular prescription?

9 A. In general, in my experience during that period of time,
10 they did not pay attention to that.

11 Q. And that was just something that wasn't tracked at all?

12 A. To my recollection, that's correct.

13 Q. Professor Fassett, if you see -- in your experience, from
14 2006 to 2013, if you see a prescription label on a pharmacy bag
15 and the label has information for a patient and the specific
16 prescription, a specific medication, et cetera, and you see the
17 bag with the label with that information, to what extent, if
18 any, does that tell you what's in the bag?

19 A. Well, ideally, it should reflect the contents, but it
20 doesn't have to. The bag could easily be separate.

21 Q. In your experience, Professor Fassett, is it accurate that
22 just seeing a label alone reveals nothing about whether a
23 patient [sic] was received by a patient?

24 A. Whether a prescription was received by a patient?

25 Q. Let me rephrase the question.

1 Professor Fassett, in your opinion and based on your
2 experience, from 2006 to 2013, to what extent, if any, does
3 simply seeing a label by itself tell you anything about whether
4 the patient got the prescription?

5 A. Nothing.

6 Q. And is the same true for seeing a label attached to a bag?

7 A. That would be true.

8 Q. Would it also be true, in your experience and based on
9 your opinion, Professor Fassett, that seeing a label -- a
10 prescription label attached to a bag would tell you nothing
11 about what's in the bag or whether anything is in the bag?

12 A. That would be correct.

13 Q. And Professor Fassett, just a few more questions, I think.

14 To determine whether a patient received a prescription,
15 can you tell if a patient, or could you tell during the
16 relevant period, 2006, 2013, whether a patient has received the
17 prescription without interviewing the patient or reviewing the
18 log used to track receipt?

19 A. I don't know of any way that you could.

20 Q. So I guess if I'm understanding correctly, you could not
21 tell whether a patient had received a prescription without
22 interviewing the patient or reviewing the log during 2006 to
23 2013?

24 A. Or the patient's agent, that's correct.

25 Q. And if you interviewed the patient during 2006 to 2013 and

1 the patient says they don't remember if they got a
2 prescription, the only way to determine whether they received
3 it is to look at the log, right?

4 A. That would be true.

5 MR. GREENBERG: Your Honor, this Court's indulgence so
6 I can confer briefly.

7 (Counsel conferring.)

8 MR. GREENBERG: Nothing further at this time, Your
9 Honor.

10 THE COURT: All right.
11 You may cross-examine.

12 MR. EISER: Your Honor, could I have just a moment?
13 (Counsel conferring.)

14 - - -

15 CROSS-EXAMINATION

16 - - -

17 BY MR. EISER:

18 Q. Good morning, Professor Fassett.

19 A. Good morning.

20 Q. Good to see you again.

21 I'll pick up with the last question you just answered.

22 You were asked, "You can't tell if a prescription was
23 delivered unless you see a delivery log"; is that right?

24 MR. GREENBERG: Objection. Mischaracterizes the
25 testimony and but . . .

1 **THE COURT:** He did say talk to the patient or look at
2 the log, didn't he?

3 **MR. EISER:** Okay.

4 **BY MR. EISER:**

5 **Q.** Those are the two ways, talk to the patient or the
6 delivery log?

7 **A.** The delivery log is evidence that it was delivered.
8 Talking to the patient or their agent could be evidence.

9 **Q.** All right. If you have, you know, months' old
10 prescriptions, six months old, that have been refilled two and
11 three times, and it's still sitting there in the pharmacy,
12 that's a pretty good indication that those medications were not
13 delivered, isn't it?

14 **MR. GREENBERG:** Object to the form.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** That would not be a way of determining
17 whether it was delivered. It would be a way to determine, I
18 guess, that it wasn't.

19 **BY MR. EISER:**

20 **Q.** Right. Okay.

21 Professor Fassett, you have never worked as a pharmacist
22 in Maryland; is that right?

23 **A.** That's correct.

24 **Q.** Or in any capacity in Maryland; is that right?

25 **A.** Not to my recollection.

1 Q. Okay. Medicare is administered by regional administrators
2 under a contract with the medical providers and pharmacies; is
3 that right?

4 A. Yes.

5 Q. And you have not seen the contract governing Maryland
6 pharmacies, correct?

7 A. During the time period, no.

8 Q. You were asked by Mr. Greenberg to write a report for
9 Mr. Annappareddy's criminal fraud case; do you remember that?

10 A. I do.

11 Q. And you wrote a report in that case that is similar to the
12 ones for this malicious prosecution case, correct?

13 A. I believe so, yes.

14 Q. But you never testified in that criminal case; is that
15 right?

16 A. That's correct.

17 Q. And that report was never reviewed or addressed by any
18 other experts, correct?

19 A. I don't know.

20 Q. Okay. And you've never testified in a criminal case,
21 correct?

22 A. I've never testified in a criminal case?

23 Q. Yes.

24 A. I think I may have testified in a criminal case, yes. I'd
25 have to look back at my records, which I don't have with me.

1 But I can't say that I never have.

2 Q. Do you remember your deposition we took out in Spokane
3 back on September 30th, 2022?

4 A. I do.

5 Q. Okay.

6 A. Mostly.

7 Q. Do you remember I asked you that question:

8 "QUESTION: Have you ever testified also in criminal
9 cases?"

10 And your answer was:

11 "ANSWER: I don't think I've ever gotten to the point
12 where I gave either a deposition or trial testimony in a
13 criminal case to the best -- I've testified in administrative
14 law cases, but not criminal cases, no."

15 Do you remember that question and answer?

16 A. Yes, I -- I do. And that's the answer I gave you then, I
17 don't think it's inconsistent with what I said. I can't say
18 that I never did. But I don't remember that I have.

19 Q. Okay.

20 The pharmacy industry, or practice of pharmacy, is
21 regulated extensively by statutory and regulatory law, correct?

22 A. That's correct.

23 Q. And a pharmacist's duty with regard to reversing claims to
24 Medicare and Medicaid pay for undelivered prescriptions, that
25 would be covered by law, right?

1 A. Or contract.

2 Q. Now, in writing that first report for the criminal case,
3 what documents did you rely on in writing that first report for
4 the criminal case?

5 A. As we sit here, sir, I don't recall, it's been a long time
6 ago.

7 Q. Okay. You didn't read any of the evidence or transcripts
8 in that criminal case before preparing that first report,
9 correct?

10 A. I don't believe -- I don't recall that I did, no.

11 Q. So the information you relied on was what Mr. Greenberg
12 told you, right?

13 MR. GREENBERG: Objection, that's inaccurate based on
14 the contents of his report itself, which Government counsel has
15 had since June of last year.

16 THE COURT: Well, it is cross-examination. I'll allow
17 it for what it's worth.

18 Go ahead.

19 THE WITNESS: I don't recall -- today, I don't recall,
20 in that original case, that I was given more than questions
21 about the material that I testified, that was in my current
22 report, which is what was -- what were the -- answering
23 questions about the things that I covered in the report under
24 the standard of care and based on my experience, generally.

25 BY MR. EISER:

1 Q. And who provided you those questions that you answered?

2 A. It would have been counsel for --

3 Q. For?

4 A. There have been more than one counsel -- it would have
5 been counsel for Mr. Annappareddy, I would think. That's --
6 the people that retain me generally ask me -- ask me to do the
7 kinds of things I do in my report.

8 Q. Okay. You haven't read the complaint that brings us
9 together today in this malicious prosecution case; is that
10 right?

11 A. Not to my recollection, no.

12 Q. And you've never testified in a case involving a claim of
13 malicious prosecution, correct?

14 A. I would think not, no.

15 Q. Okay. The only thing you read from the underlying
16 criminal case in forming your opinions here is Judge Russell's
17 opinion vacating the judgment; is that right?

18 A. I think I saw that, yes. I'm pretty sure I did, because I
19 believe I abstracted it for the American Society for Pharmacy
20 Law.

21 Q. From that decision, you learned that the conviction was
22 vacated because of the accidental destruction of some documents
23 by the U.S. Attorney's Office and some errors in the claims in
24 the analysis for claims for payment?

25 **MR. GREENBERG:** Objection. Judge Russell did not find

1 the destruction of documents at the direction of Sandra
2 Wilkinson was, quote, "accidental." It mischaracterizes.

3 **THE COURT:** I will sustain that objection. I do think
4 it mischaracterizes what happened.

5 **BY MR. EISER:**

6 **Q.** Well, you did learn from Judge Russell's opinion that the
7 reason the decision was vacated, the conviction was vacated,
8 was a destruction of documents and errors in the analysis of
9 the claims for payment; is that right?

10 **MR. GREENBERG:** Objection. That mischaracterizes
11 Judge Russell's decision, which relied on --

12 **THE COURT:** It speaks for itself, and I've read it
13 more than once.

14 **MR. EISER:** I understand, Your Honor. I'm trying to
15 get the basis for his opinions. He did answer this question at
16 deposition so --

17 **THE COURT:** Well, go ahead. Ask him the question.

18 **BY MR. EISER:**

19 **Q.** Okay. What you learned from the criminal case was that it
20 was vacated because of the destruction of documents and errors
21 in the analysis for the claims for payment; is that right?

22 **A.** I think that was the gist of what I was aware of, yes.

23 **Q.** You're also aware that when the errors in the loss
24 analysis presented at trial were brought to the attention of
25 the Government, that the prosecution acknowledged those errors

1 and agreed to vacate the judgment, that's in Judge Russell's
2 opinion --

3 **MR. GREENBERG:** Objection, mischaracterizes the
4 record. There was a 15-plus month gap of where that happened,
5 and that is just totally misconstruing what happened.

6 **MR. EISER:** Counsel has --

7 **THE COURT:** Well, do you acknowledge it was 15 months
8 later when the Government made the acknowledgment?

9 **MR. EISER:** Yes, Your Honor.

10 **THE COURT:** With that understanding, you can proceed.

11 **MR. EISER:** My only question is about the speaking
12 objections. Mr. Greenberg was objecting to them quite
13 vigorously last week, and now he seems to have fallen in love
14 with them. I would object to that.

15 **THE COURT:** All right. Well, go ahead.

16 **BY MR. EISER:**

17 **Q.** Now, are you aware that the loss analysis that was
18 presented at trial, at the criminal trial that Judge Russell
19 talked about, was entirely different from the loss analysis
20 that was submitted in the search warrant affidavit that is the
21 foundation of this case?

22 **MR. GREENBERG:** Objection, Your Honor. This is way
23 outside the scope of Professor Fassett's opinions. I've let a
24 lot of this go --

25 **THE COURT:** I think I tend to agree, Mr. Eiser.

1 **MR. EISER:** Yes, Your Honor.

2 **THE COURT:** I think we're going far afield of what he
3 testified to on direct. So I'll sustain the objection, beyond
4 the scope of direct.

5 **BY MR. EISER:**

6 **Q.** You have not read the MEDIC 1495, I just want to be clear
7 on that; is that correct?

8 **MR. GREENBERG:** Objection, Your Honor. This is
9 clearly beyond the scope of both Professor Fassett's report and
10 his direct. I don't know what's happening here.

11 **THE COURT:** Once again, aren't you going beyond what
12 he testified to on direct?

13 **MR. EISER:** He's testified to a number of issues.

14 For example, he just testified extensively about software
15 prescription processing --

16 **MR. GREENBERG:** I would suggest, Your Honor, that the
17 witness be excused if we're going to have these kinds of
18 debates. But I also think this is pretty clearcut, pretty
19 clearly outside the scope.

20 **THE COURT:** Let me see where we're going with this.
21 I'm dubious of whether we're going to go very far on this. Let
22 me just see. Go ahead. Overruled for now.

23 **BY MR. EISER:**

24 **Q.** For example, you talked for about a half hour on direct
25 about prescription processing software and circumstances where

1 it could print a label or print an extra label; do you remember
2 that testimony?

3 A. I still do, yes.

4 Q. And you have no idea what prescription processing software
5 they used at Pharmacare in 2011, '12, and '13, correct?

6 A. That's correct.

7 Q. Now, so you -- and you haven't read the search warrant
8 affidavit that brings us together; is that right?

9 MR. GREENBERG: Objection, Your Honor. Way outside
10 the scope of both the report and the --

11 THE COURT: Sustained. Sustained.

12 BY MR. EISER:

13 Q. Well, just to be clear, you have no opinions about
14 anything to do with the operation of Pharmacare during the
15 relevant time period; is that right?

16 MR. GREENBERG: Objection, that mischaracterizes in
17 part. But . . .

18 THE COURT: Well, I'll let the witness handle it any
19 way he wants to.

20 Overruled.

21 THE WITNESS: Could you repeat the question.

22 BY MR. EISER:

23 Q. You have no opinions about the operations of Pharmacare?

24 A. I was not asked to do so, and I have not done so.

25 Q. It would be inappropriate to be -- for a pharmacist to be

1 paying kickbacks; is that right?

2 **MR. GREENBERG:** Objection, Your Honor. Outside the
3 scope of direct. And I would ask at this point that Your Honor
4 ask Government counsel to wrap it up if this is going to
5 continue.

6 **THE COURT:** I do think that's beyond the scope of
7 direct.

8 Sustained.

9 **MR. EISER:** All right, Your Honor.

10 Your Honor, could I have a moment?

11 **THE COURT:** All right. Go ahead.

12 (Counsel conferring.)

13 **MR. EISER:** Thank you, Your Honor. That's all we
14 have.

15 **THE COURT:** All right.

16 Any redirect?

17 **MR. GREENBERG:** Yes, Your Honor, just very briefly.

18 - - -

19 **REDIRECT EXAMINATION**

20 - - -

21 **BY MR. GREENBERG:**

22 **Q.** You were asked about a hypothetical at the start of
23 Government counsel's examination involving a situation where
24 old prescriptions that were filled -- the same prescription was
25 filled two or three times were sitting around for long periods

1 of time, right?

2 A. I think so, yes.

3 Q. So that question, in that hypothetical, two or three
4 duplicates filled to the same prescription were sitting around;
5 that's how you understood it, right?

6 A. I understood it that there were refills of a prescription
7 in the pharmacy or a duplicate, yes.

8 Q. And so when you answered that question, you were -- you
9 were responding to the hypothetical as posed?

10 A. That's correct.

11 Q. And you agree -- in your experience, Professor Fassett, in
12 this unusual hypothetical where these same old prescription
13 filled two or three times was sitting around after of a very
14 long period of time, you would still need to follow up by
15 either interviewing the patient or looking at the log to see if
16 the patient had received the prescription, right?

17 A. To determine if one had been delivered, yes.

18 **MR. GREENBERG:** Nothing further, Your Honor.

19 **THE COURT:** All right.

20 Thank you, sir. You may step down. You're excused.

21 **THE WITNESS:** Thank you.

22 (Witness exits.)

23 **THE COURT:** Please call your next witness.

24 **MR. GREENBERG:** Your Honor, Plaintiff Reddy Vijay
25 Annappareddy calls former Assistant U.S. Attorney Sandra

1 Wilkinson.

2 (Witness enters.)

3 THE CLERK: Please remain standing, raise your right
4 hand.

5 (Witness sworn.)

6 THE CLERK: You may be seated.

7 For the record, ma'am, could you please state and spell
8 your first and last name, please.

9 THE WITNESS: Good morning. Sandra Wilkinson,
10 W-i-l-k-i-n-s-o-n.

11 THE CLERK: Thank you.

12 - - -

13 DIRECT EXAMINATION

14 - - -

15 BY MR. GREENBERG:

16 Q. Good morning, Ms. Wilkinson.

17 A. Good morning, sir.

18 Q. How you have been since your deposition last year?

19 A. How have I been?

20 Q. Yes.

21 A. What do you mean?

22 Q. Have you been well since your deposition last year?

23 A. Yes, I've been well. Thank you.

24 Q. Ms. Wilkinson, you were the lead prosecutor in the
25 criminal case against Mr. Annappareddy, correct?

1 A. I was.

2 Q. And in that case, or to kick off that case, to initiate
3 that case, on July 23rd, 2013, you brought Special Agent Robert
4 Mosley before the grand jury, correct?

5 A. I recall bringing Special Agent Mosley. I'm not positive
6 of the date.

7 Q. In the Pharmacare case, as in any case, Ms. Wilkinson, you
8 would not tolerate a case agent lying before the grand jury,
9 right?

10 A. Of course not.

11 Q. And you wouldn't have allowed an agent to present false
12 testimony before a grand jury in the first place if you had
13 known it was false, right?

14 A. Correct.

15 Q. It was your understanding, as the lead prosecutor
16 presenting Special Agent Mosley to the grand jury on July 23rd,
17 2013, that everything he said to the grand jury was truthful,
18 right?

19 A. I believed it to be truthful, yes, sir.

20 Q. And if you had any reason to believe it wasn't fully
21 truthful, you would have corrected it, right?

22 A. Correct.

23 Q. You were aware that on the same day that you presented
24 Special Agent Mosley's testimony to the grand jury earlier that
25 day, then Special Agent Maura Lating presented an affidavit as

1 part of a search warrant affidavit to Magistrate Judge Sullivan
2 for several Pharmicare locations, right?

3 A. I know she was the affiant. Again, I'm not 100 percent
4 sure of the dates and whether it was the same date or not.

5 Q. Okay. If you had known -- is it okay with you,
6 Ms. Wilkinson, if I refer to that affidavit as "the Lating
7 affidavit"?

8 A. Certainly.

9 Q. If you had known that anything in the Lating affidavit was
10 incorrect or inaccurate, you wouldn't have allowed then-Special
11 Agent Lating to submit it, would you?

12 A. Correct.

13 Q. You trusted Maura Lating to accurately present the facts
14 to the Court, meaning Magistrate Judge Sullivan, correct?

15 A. Yes, of course. That was her responsibility.

16 Q. And as far as you knew, as of the date that then-Special
17 Agent Lating presented the affidavit, the Lating affidavit, you
18 had no reason to believe that she included incorrect
19 information in that affidavit, right?

20 A. I had no reason to believe that.

21 Q. The answer is yes?

22 A. Yes.

23 Q. You similarly had no reason to suspect that then-Special
24 Agent Mosley put any incorrect information in the parts of the
25 Lating affidavit that he was drafted, right?

1 A. Correct.

2 Q. As far as you knew, Ms. Wilkinson, as of the date the
3 Lating affidavit was presented, to the extent that other agents
4 or investigators assisted then-Special Agent Lating in drafting
5 the Lating affidavit, you had no reason to believe that any of
6 those persons provided inaccurate information to Lating, right?

7 A. Yes. At the time that it was submitted, of course. We
8 all believed it to be truthful and accurate.

9 Q. And when you say "we," I mean, you can only --

10 A. Well, I can only speak for myself, that's correct, sir. I
11 believed it to be.

12 Q. Ms. Wilkinson, in terms to sum up this sort of topic, you
13 trusted Special Agent Lating as of July 2013, right?

14 A. Yes.

15 Q. And, more specifically, you trusted her accurately to
16 present the facts gathered in the investigation to the
17 magistrate judge, right?

18 A. Yes.

19 Q. I want to turn to your role as the lead prosecutor in
20 reviewing the Lating affidavit.

21 There was a second prosecutor named Catherine Schuster
22 Pascale working with you, right?

23 A. Correct.

24 Q. She was a Special Assistant U.S. Attorney?

25 A. At some point she was designated a Special Assistant U.S.

1 Attorney.

2 Q. Okay. And her full-time job, her main job was working in
3 the Office of the Maryland Attorney General as an Assistant
4 Attorney General?

5 A. Yes.

6 Q. And you and Ms. Pascale, in reviewing the affidavit, you
7 read it for your own sense of whether there was probable cause,
8 you might reorganize it and correct some grammatical errors,
9 but you relied on the agent, Maura Lating, about the truth of
10 the statements, right?

11 A. Well, she was the affiant. But the way -- if I might
12 explain, Your Honor. The way that the U.S. Attorney's Office
13 works is that when we read and submit an affidavit to the
14 court, we are not just reviewing it for grammatical errors or
15 corrections, we're reading it, yes, to make our own
16 determination of whether or not there was probable cause, but
17 we could have substantive suggestions and comments, we could
18 have things that we wanted added in there. We could make sure
19 that we understand it substantively.

20 I think it's more than just reviewing it for typos and for
21 probable cause. Like, there is a teamwork aspect to it. And
22 we have -- in the U.S. Attorney's Office, we have a gatekeeper
23 function to the magistrate judges.

24 Q. Ms. Wilkinson, in this case, however, you recall you've
25 testified at deposition about this case?

1 A. I do.

2 Q. And regardless of what your general practice was, in this
3 case, you merely reviewed the Lating affidavit for grammatical
4 errors, probable cause, and organization, right?

5 A. In addition to what I just stated. I think there were
6 times that I added things, assuming Ms. Lating agreed with it.
7 I recall specifically when there was a conflict in a report
8 that was also in the affidavit, asking them to make
9 clarifications with the witnesses, that sort of thing.

10 Q. We're going to play a clip from your videotaped
11 deposition.

12 (Video playing.)

13 **BY MR. GREENBERG:**

14 Q. Ms. Wilkinson, that was truthful testimony, right?

15 A. Yes.

16 Q. So you now agree that it was true -- the truth is that in
17 the Pharmacare case, you read the Lating affidavit for your own
18 sense of whether there was probable cause, you organized it,
19 you maybe corrected some grammatical errors, but you relied on
20 Maura Lating for the truth of the statements in the affidavit?

21 A. Again, just to explain, yes, I think that what I'm saying
22 is not inconsistent with what I said here. It depends on what
23 section of the affidavit you're referring to. But certainly, I
24 read it to make sure that I understood it and if there were --
25 but she is the person to whom is making the swearing to the

1 judge that the assertions are true.

2 If you're -- I mean, I don't know how else to explain it
3 more than that. But I participate in the drafting of --
4 drafting is the wrong word. But of the -- it's a very long
5 affidavit, and you have to make sure that you understand all of
6 it.

7 Q. Okay. But in terms of the substance and accuracy of the
8 statements in the affidavit, you trusted the agents on that and
9 those issues, right?

10 A. Certainly. They're the ones that are swearing to it, to
11 the judge.

12 Q. Let's move on to the topic of now former Special
13 Agent Robert Mosley and MEDIC 1495.

14 Ms. Wilkinson, you relied on then-Special Agent Mosley to
15 provide accurate information regarding MEDIC 1495, right?

16 A. I'm not exactly sure. You -- meaning he would give me
17 their report.

18 Q. Well, let me sort of back up.

19 We've established that you relied on Special Agent Mosley
20 to provide you with accurate information about anything in the
21 investigation, right?

22 A. Yes, of course.

23 Q. Okay. So that would also apply to Special Agent Mosley's
24 communications with MEDIC about MEDIC 1495?

25 A. Can you say that again.

1 Q. Sure.

2 Just as you relied on Special Agent Mosley otherwise, you
3 relied on Special Agent Mosley to give you accurate information
4 about his communications with MEDIC regarding MEDIC 1495?

5 A. Yes.

6 Q. And you relied on Special Agent Mosley to accurately relay
7 to you what MEDIC told him, right?

8 A. Yes.

9 Q. And so you understood from Special Agent Mosley that there
10 were no double-counting or duplication issues in MEDIC 1495,
11 right?

12 A. I never thought there was double-counting issues until we
13 were told that after the trial. That's the first time I
14 learned that there were double-counting issues with the --

15 Q. So the answer to my last question is yes?

16 A. It's just how you were saying it. I'm not sure whether he
17 ever said to me, you know, "Ms. Wilkinson there's no
18 double-counting issues." I think we just assumed that all
19 auditors and people doing that type of work would not
20 double-count.

21 Q. Well, and your understanding that you got specifically
22 from Special Agent Mosley is that MEDIC was not allowing any
23 duplicates, right?

24 A. I think that that's what they're striving to do. They
25 constantly go back and read and review their data, and they're

1 striving not to have double-counting.

2 Q. And Special Agent Mosley told you that, right?

3 A. I don't have a specific recollection of Agent Mosley
4 saying those words to me. He would provide me with a report,
5 and there were other people who were looking at the data at the
6 time -- and I guess you're -- I'm assuming this is all around
7 the time of the Lating affidavit, is that what you're referring
8 to? Not after the Lating affidavit?

9 Q. Ma'am, I'm asking you about exactly what the question
10 said.

11 A. At no time do I have a specific recollection of
12 Agent Mosley saying those exact words to me.

13 MR. GREENBERG: Court's indulgence.

14 (Counsel conferring.)

15 MS. FARBER: Excuse me, Your Honor, while they're
16 conferring, may I have the deposition cite for the clip that
17 was played previously?

18 THE COURT: That's a reasonable request.

19 If you could give her the page and line cite.

20 MR. GREENBERG: Yeah, I'll give it to you in just a
21 moment. Actually, Brian can very well do that.

22 BY MR. GREENBERG:

23 Q. Ms. Wilkinson, I don't think I have a whole lot more. Let
24 me switch to a different topic, and that's immigration.

25 You were not aware of any legal basis, after

1 September 1st, 2016, for putting a hold on any immigration
2 application by Mr. Annappareddy, right?

3 A. What is the significance of September 1, 2015?

4 Q. That's the date that Judge Russell --

5 A. That's the date of the hearing?

6 Q. -- ruled and --

7 A. Dismissing --

8 Q. -- you recall you were present?

9 A. Yes, I recall.

10 Q. That's the date in which Judge Russell --

11 A. Putting an immigration --

12 Q. -- decided that the criminal case, the remaining charges
13 in the second superceding indictment had to be dismissed with
14 prejudice?

15 A. Yes, I just didn't recall what the actual date was. If
16 that's --

17 Q. Let me rephrase the question. Now that --

18 **THE REPORTER:** One at a time.

19 **MR. GREENBERG:** My apologies.

20 **BY MR. GREENBERG:**

21 Q. You now understand why I'm asking about that date?

22 A. Yes.

23 Q. What that date is?

24 A. Yes.

25 Q. All right. Let me rephrase the question.

1 Ms. Wilkinson, were you aware of any legal basis after
2 September 1st, 2016, for putting a hold on any immigration
3 application by Mr. Annappareddy?

4 A. And what do you mean by "a hold"? This is what I
5 remember. I remember -- was it September 2015, that's after we
6 did the second superseding indictment, and that's when
7 Judge Russell dismissed that --

8 MS. FARBER: Your Honor, going to object to this
9 question on lack of foundation. It hasn't been established
10 that Ms. Wilkinson would be aware.

11 THE COURT: Well, just, if she knows.

12 If you don't know, you can just indicate.

13 THE WITNESS: Yeah, I -- I -- I have no recollection
14 of a hold on Mr. Annappareddy's immigration status.

15 BY MR. GREENBERG:

16 Q. So that wasn't my question. But to refresh your
17 recollection, why don't we play another video clip from your
18 deposition, see if that can refresh your memory. All right?

19 MS. FARBER: May I have the page and line?

20 MR. GREENBERG: Yes, 158, lines 3 to 14.

21 (Video playing.)

22 BY MR. GREENBERG:

23 Q. Does that refresh your recollection, Ms. Wilkinson?

24 A. About whether or not there was a legal basis to put a hold
25 on his immigration status?

1 Q. After September 1st, 2016, yes, the question I asked you
2 earlier.

3 A. Didn't that say 2014?

4 Q. Okay. So rather than replaying the entire clip, I'm just
5 going to read the first part of it, and see if this refreshes
6 your recollection so we can try to move on.

7 The question, back then, you know, many months ago was,
8 quote:

9 "QUESTION: Are you aware of any legal basis after
10 September 1st, 2016, for putting a hold on any immigration
11 application by Mr. Annappareddy?"

12 And you answered "No" before you went on, right?

13 A. Yes, I answered "No."

14 Q. And you stand by that testimony, right?

15 A. Yes. I guess the confusion that I'm having --

16 Q. Ma'am --

17 MS. FARBER: Your Honor, she should be permitted to
18 answer.

19 THE COURT: Go ahead and finish your answer. Go
20 ahead.

21 THE WITNESS: I'm sorry, sir. The confusion that I'm
22 having is that I know that in the investigation there were
23 evidence that Mr. Annappareddy had committed violations of
24 various immigration status. There was evidence of that. And
25 we had contemplated asking the grand jury to return various

1 immigration charges against him in the first indictment and
2 that we considered it as well after Judge Russell -- after we
3 voluntarily dismissed the indictment after trial before the
4 second superseding. So when you say legal -- I don't know of
5 any hold on his immigration application. But when you say --
6 like, I'm just confused because I do think there was some
7 evidence that he had violated some immigration. But I don't
8 know of a hold, and I'm not even sure what that means.

9 **MR. GREENBERG:** I'm going to move to strike all of
10 that answer as both nonresponsive and based on post-indictment
11 after-acquired evidence.

12 **THE COURT:** Well, she just explained her confusion.
13 Overruled.

14 **BY MR. GREENBERG:**

15 **Q.** Ms. Wilkinson, you know that the charge added post
16 indictment, years later, for purported visa fraud was dismissed
17 with prejudice by Judge Russell, right?

18 **A.** I know that he dismissed the whole --

19 **Q.** With prejudice, right?

20 **A.** With prejudice.

21 **MR. GREENBERG:** All right. Let me just confer and see
22 if I have anything else.

23 (Counsel conferring.)

24 **MR. GREENBERG:** Nothing further at this time, Your
25 Honor.

1 **THE COURT:** Let's go ahead and begin
2 cross-examination.

3 - - -

4 **CROSS-EXAMINATION**

5 - - -

6 **BY MS. FARBER:**

7 **Q.** Good morning, Ms. Wilkinson.

8 **A.** Good morning, Ms. Farber.

9 **Q.** When did you join the U.S. Attorney's Office?

10 **A.** In September of 1994.

11 **Q.** What kind of cases did you handle while you were an AUSA?

12 **A.** Guns, drugs, violent crime, capital murder, fraud, public
13 corruption, child exploitation. I mean, I was there for almost
14 30 years.

15 **Q.** Did you ever hold any supervisory positions with the U.S.
16 Attorney's Office?

17 **A.** I did.

18 **Q.** And when did you hold those positions?

19 **A.** In -- I think around 2005, then-U.S. Attorney Rod
20 Rosenstein appointed me to be the chief of major crimes in
21 Baltimore, and I moved my office from the Greenbelt Southern
22 Division up to Baltimore to head that section.

23 **Q.** Did you have any experience with healthcare fraud cases
24 before you took on the Annappareddy case?

25 **A.** I did.

1 Q. Can you describe that experience.

2 A. I had -- I had a number of trials against pharmacists and
3 doctors. I prosecuted a cardiologist for putting unnecessary
4 stents in people's hearts. I prosecuted a number of different
5 healthcare matters that resulted in plea agreements. I
6 probably had four or five trials involving healthcare fraud.
7 And it was in my portfolio to -- as major crimes chief, to
8 review and authorize cases of other prosecutors in the office
9 that were going to handle healthcare fraud matters.

10 Q. And how many, approximately, criminal investigations had
11 you handled before you took on the Annappareddy case?

12 A. Hundreds.

13 Q. Have you ever taught any classes in any aspect of criminal
14 law or practice?

15 A. I -- I taught at -- a semester with a public offender --
16 assistant public defender John Chamble at Catholic University.
17 I taught at University of Maryland, a federal criminal
18 investigation class. I taught, internally in the Office,
19 federal criminal investigative techniques for years, and that's
20 where we -- in-house training for new prosecutors. I've taught
21 at various seminars for agents in a number of different
22 matters.

23 Q. How did you become involved in the Annappareddy
24 prosecution?

25 A. As best I can recall, the case was -- I can't recall if it

1 was brought to me by the civil section when a *qui tam* action
2 was filed, because that could be something that could happen
3 with a civil and criminal component to something. Or if I got
4 a call directly from then-AUSA Judge DiPietro, asking me to
5 look at the case. But at some point, I met Ms. Pascale and
6 Laurie Gutberlet and possibly another agent or two from there
7 in the context of those individuals as to whether or not there
8 were possible criminal aspects of what was then a civil *qui tam*
9 case.

10 Q. What appealed to you, if anything, about the case?

11 A. When I first met Agent Gutberlet -- well, I shouldn't say
12 agent, she was an investigator, but I was impressed with her
13 knowledge of the case, of her investigation to date. I don't
14 always get cases that have been already formulated in some
15 ways. She had already spoken to a number of witnesses, was
16 developing a confidential source. She had reviewed claims
17 data, talked to a variety of different people and interviews,
18 and she just struck me as having her stuff together. She
19 seemed very professional. It was the first time I had ever met
20 her, but I knew that I thought I would like to work with her.

21 Q. What charges were you considering at the time that you
22 came on board?

23 A. Healthcare fraud, you know, and there are a number of
24 different charges, including immigration issues that came up in
25 the case, various ways of charging false statement, conspiracy,

1 adulterated product. There was a number of different
2 allegations at the very beginning that gave us -- into looking
3 into various federal statutes that might apply.

4 Q. Now, is dollar loss an element of any of the charges that
5 you pursued?

6 MR. GREENBERG: I'm going to object to the extent this
7 calls for a legal conclusion.

8 THE COURT: Overruled.

9 THE WITNESS: Healthcare fraud, the statute itself, I
10 think 1340 -- I don't know, it's been a long time since I've
11 looked at it, and I've been retired a year, so forgive me if I
12 have the statute wrong. But it does not require us to prove a
13 specific dollar amount. 1346.

14 BY MS. FARBER:

15 Q. I'm going to show you a new exhibit.

16 MS. FARBER: I believe we're on Defense Exhibit 100.
17 Is that right Ms. Herring?

18 THE WITNESS: In the book or --

19 MS. FARBER: No, I have it in my hot little hands, so
20 I'm going to bring it over to you.

21 MR. GREENBERG: Counsel, what was this marked as?

22 MS. FARBER: This is Defense Exhibit 100, sir.

23 BY MS. FARBER:

24 Q. What is the document that I've just handed to you?

25 A. The original indictment against Mr. Annappareddy and two

1 of his colleagues, Vipin Patel and Jigar Patel.

2 **Q.** Okay. And did you have a hand in drafting this
3 indictment?

4 **A.** I'm certain that I wrote it.

5 **Q.** Now, looking at the charges in the indictment, was
6 Mr. Annappareddy charged anywhere with stealing any amount of
7 money for his personal -- for his personal self?

8 **A.** No.

9 **MS. FARBER:** Your Honor, I'd like to move Defense
10 Exhibit 100 into evidence.

11 **THE COURT:** Any objection?

12 **MR. GREENBERG:** Just one moment, Your Honor.

13 I -- no, we don't object. We support the admission of
14 this document.

15 **THE COURT:** Admitted without objection.

16 **BY MS. FARBER:**

17 **Q.** All right. Ms. Wilkinson, please describe Robert Mosley
18 as an agent.

19 **A.** At the time of the Annappareddy investigation and the
20 Pharmacare investigation, which is -- we really called it the
21 Pharmacare investigation, I had -- I had known Agent Mosley for
22 some years. I had work with him in the context of other
23 investigations before.

24 **THE WITNESS:** And I should say, Your Honor, that most
25 times in a healthcare fraud case, as well as other types of

1 white-collar crime, it's that kind of an alphabet soup of
2 agencies that can be involved in a case. So I don't recall
3 ever having Robert, Agent Mosley, as a lead case agent, but was
4 always in a support position with another agent, maybe from
5 HHS, from Food and Drug Administration, from the FBI, from
6 Defense Criminal Investigative Service. And I would describe
7 him as a genuinely honorable, extremely nice man, who wasn't
8 always as, you know -- I don't know if you've met any of the
9 people here, but Agent Lating is much more of -- an intensity
10 to her that has the knowledge and the substantive facts.
11 Robert is our person that can talk to people, and people like
12 him and talk to him, and get information, you know, like almost
13 to collect it. But I don't -- yes, I would describe him in
14 that way.

15 **BY MS. FARBER:**

16 **Q.** That goes to my next question, Ms. Wilkinson, which is
17 what was Agent Mosley's role on the Pharmacare investigation?

18 **A.** We all had a number of different roles that we supported,
19 but my specific apropos of what is going on here is that he was
20 the collector of all of the data for all the different -- first
21 the MEDIC analysis and eventually for the in-house analysis
22 that the U.S. Attorney's Office did, the person that would call
23 and make sure they sent it, get the disks together, to make
24 copies of the disks, make sure that we had them for discovery,
25 make sure we had them for the agencies that were reviewing

1 them. That was his job.

2 Q. You've gone into this a little bit, but would you describe
3 Agent Lating to us.

4 A. Agent Lating was a very dedicated, hardworking -- I'm not
5 sure I've met too many other agents who worked as hard as she
6 did. She was very determined and smart and cared deeply about
7 what she did. And had a lot on her plate. And was a good,
8 good substantive agent that had a good handle on the laws and
9 what was required to prove a case of this magnitude.

10 Q. What was Agent Lating's role on the Pharmacare
11 investigation?

12 A. She was lead case agent. When I say that, I don't know if
13 she was the lead case agent when it started, but I designated
14 her the lead case agent and the one that would be at trial
15 because you have to have one. When you have a number of
16 different agencies working on the same case, you need one
17 person to be your go-to person that is kind of -- you know, can
18 then delegate other assignments to other agents, and that was
19 Agent Lating.

20 Q. You mentioned former AUSA now Judge Michael DiPietro.
21 What was his role on the team?

22 A. My recollect -- before he went on the bench, he was the
23 civil attorney that was assigned to this case. And my
24 recollection is he was in it before me. And the role of the
25 civil attorneys in a possibly parallel case like this, is that

1 he is looking at it from a completely different angle than we
2 are. We're looking for evidence of criminal intent and
3 wrongdoing of fraud, so to speak, and he is looking for money
4 and what were the harms to various federal programs.

5 And he had experience working with this type of data and
6 claims information, and he became the person that I relied on
7 at the very beginning to ensure that I understood and that he
8 understood and what the possible dollar fraud was.

9 Q. Now, thinking about the Pharmacare investigation team, was
10 every team member involved in every aspect of the
11 investigation?

12 A. No.

13 Q. Why?

14 A. Because you can't, right. There was too much to do. We
15 had regular meetings. And Ms. Pascale was particularly good at
16 doing to-do lists and getting us all so we know what was -- you
17 know, what was required of us. But once we had that general
18 meeting, we were off all doing our various different roles in
19 the case and then everybody had something. Jimmy from DCIS,
20 whose name escapes me right now because I'm nervous, did the
21 Eloise Lane analysis. We had Robert doing the collection of
22 the claims data. We had Ms. Arnold who would deal with
23 Ms. Ridolfi and other state issues. We had Agent Lating who
24 probably dealt with just about everything else. So there was a
25 number of different hands in it, so to speak.

1 Q. Now, Ms. Wilkinson, what is a covert investigation?

2 A. A covert is when the target doesn't know that we're
3 looking at him.

4 Q. And before the Pharmacare search warrants were authorized,
5 was the Pharmacare investigation covert?

6 A. We hope so. Our -- our intention was that
7 Mr. Annappareddy not know that there was a federal
8 investigation, a criminal investigation of him. And we hope
9 that in most of our white-collar cases if we're fortunate
10 enough to get it before the target knows. Because there's so
11 many different types of investigative techniques you can use
12 prior to going over it; that is, doing a search warrant or
13 arrest or that sort of thing.

14 So, yes, we hoped that it was covert, and we intended for
15 it to be covert.

16 Q. And what are those -- well, why was the investigation
17 covert, initially?

18 A. To get as much evidence as we could for collection for a
19 possible search warrant. Probable cause information to
20 corroborate the various different types of information that
21 we're getting. To hopefully be able to do an extensive
22 interview with the target where we're prepared for it prior to
23 going overt. That was the intention, to interview
24 Mr. Annappareddy the day we executed the search warrants and do
25 other interviews as well.

1 We tried to say covert to look at claims data. And plus,
2 we're cognizant of our responsibility to have probable cause
3 before we go into a business, an operating business, and the
4 ramifications of a federal investigation into a business. So
5 we take a number of different steps to make sure we're getting
6 good information, we're corroborating it internally, we're
7 collecting our own preparation for the day that we can
8 interview our main targets so we can cross-check and see who's
9 telling us the truth and who's not telling us the truth. And
10 our goal, always, is to stay as covert as we can for as long as
11 we can.

12 Q. Are there any concerns about interviewing current
13 employees of an organization while you are still in the covert
14 phase of an investigation?

15 A. For that exact reason, absolutely. So we try to pick and
16 choose the people that we think will talk to us, a, or won't
17 advise the target of what is going on is the most important
18 part of it. So you don't always get to do that. You sometimes
19 do, and you can interview some people.

20 For example, we had a *qui tam* relator here who was giving
21 us information. Otherwise, we try to stick to some third
22 parties first. See who -- for lack of a better word, who we
23 can pick off and see if they'll talk to us before. I mean,
24 it's just like, you know, no different in a drug case, for
25 example, where we would try to find the delivery person and see

1 if they'll talk to us and start selling drugs, you know, at our
2 order and control before we go and take down the big
3 organization. It's very similar technique.

4 Q. And did you have the same concerns about requesting
5 documents from Pharmacare while you were still covert?

6 A. Oh, yeah. The exact same reason. We wouldn't issue grand
7 jury subpoenas to the target and his business while we were
8 staying covert. We would get our claims data and our
9 third-party data from other -- in other ways that we can.

10 Q. What sort of evidence are you looking for in deciding
11 whether to pursue a search warrant?

12 A. Well, when a case is authorized for investigation in the
13 U.S. Attorney's Office, we already have information that
14 somebody has committed a crime or possibly committed a crime.
15 And here, it was a *qui tam* suit. And most *qui tams* in the U.S.
16 Attorney's Office are looked at by a criminal AUSA for
17 potential criminal prosecution. And many of them don't end
18 that way because either there isn't that proof beyond -- you
19 know, at the end of the day, can we get proof beyond a
20 reasonable doubt that somebody has committed fraud. But we're
21 looking for that nefarious type of behavior. We're looking for
22 someone who had knowledge of what they were doing and intended
23 to cheat and lie to get -- you know, to get money from the
24 government.

25 Q. Now, thinking about the Pharmacare investigation, were

1 AIDS drugs the only drugs that you were concerned about in the
2 investigation?

3 A. No.

4 Q. Why not?

5 A. Because they weren't the only ones that we were told about
6 that were being -- I'll call it billed for services not
7 rendered and, essentially, these automatic refills that were
8 being done without providing the drugs or the prescriptions to
9 the individual customer. So it wasn't just the AIDS drugs,
10 although those were expensive drugs and had kind of, you know,
11 for lack of a better word, sex appeal to them in the case
12 because of the nature of the drugs.

13 But if it had been baby aspirin and there were thousands
14 of pills that were, you know, prescribed for babies that never
15 got the aspirin, we would have been equally concerned about it.

16 Q. How, if at all, was price per pill relevant to your
17 criminal investigation?

18 A. So my --

19 **THE WITNESS:** Your Honor, one of my -- I mean, I --
20 I've been a prosecutor a long time, but I am no brain surgeon.
21 And every time I met with the MEDIC, they had this very
22 convoluted way of trying to price out what the damages were.
23 And, to me -- because, you know, I have to eventually explain
24 it to a jury and a judge, I just wanted to know were they
25 dispensing pills that didn't go to the customers, right. I

1 didn't care if it was a dollar or a thousand dollars.

2 You know, in the world, you know, if it's, you know, much
3 more money, the judge will decide what the appropriate sentence
4 would be if we commit them. But I cared about the pills.
5 Like, were they getting the pills that Pharmacare said they
6 were getting.

7 And MEDIC had this incredibly convoluted formula for
8 trying to figure out per -- what the loss was. And it became
9 very frustrating to me as a -- I'm, you know, a prosecutor
10 because it's just -- I couldn't understand it. And I remember
11 saying it on many, many occasions, "Do we have to do it this
12 way? I don't care how much things cost. I just care that
13 pills were not dispensed to the people that were supposed to be
14 receiving them."

15 **Q.** Ms. Wilkinson, was a review of delivery logs necessary,
16 from your perspective, to get probable cause before pursuing a
17 search warrant?

18 **A.** No.

19 **Q.** Why not?

20 **A.** Because the way that we understood a business like this to
21 be doing, that delivery logs are only good as the people that
22 are getting them to sign them or to look at them or to
23 review -- you know, the ones that go out there and get people
24 to sign it. And that could be altered. It could be -- I mean,
25 we're going to look at them once we find them, but we didn't

1 need them to be able to prove probable -- to collect enough
2 probable cause to be able to do a search warrant.

3 Q. What about signature logs, so logs that a patient would
4 sign picking up a prescription at a pharmacy. Were those
5 necessary to review before you pursued a search warrant?

6 A. No. Of course not.

7 Q. And why do you say that?

8 A. Again, probable cause -- we had -- we had two people in
9 the company, the *qui tam* relator, Mr. -- I can't say his last
10 name right now, and Ms. Ridolfi and customers and some other
11 employees who were telling us about the scheme that was going
12 on at Pharmacare. For probable cause at this point, we're
13 looking for what we should be looking for in the pharmacy when
14 we do the search warrant. We did not -- we knew we would find
15 some signature logs and delivery logs because they told us they
16 existed, but there was always information that they weren't
17 used all the time, that people weren't signing them or they
18 weren't regular part of their business. And I think that's
19 what we eventually found out as well.

20 Q. And did you ultimately find evidence that signature logs
21 had been forged?

22 A. Yes. I believe some of the customers told us that that
23 was not their signatures on the signature logs.

24 Q. Was Craig Blomquist one of those people?

25 A. Yes.

1 Q. And what did your investigation leading up to the search
2 warrant ultimately demonstrate?

3 A. Probable cause that Pharmacare had committed a crime
4 through Mr. Annappareddy and the assistance of the two
5 Mr. Patels.

6 Q. That's Vipin and Jigar Patel?

7 A. Yes.

8 Q. Now, why did the Pharmacare case include a damages
9 analysis at all?

10 A. Because at the end of the day, we would have to -- sitting
11 here today, and I look back in hindsight, I can recall several
12 times the case because of the complexity of it and the concern
13 of the jury that we not even use it at trial. I mean, I
14 believe that I said on a number of occasions to our team, "I
15 don't even know why we're -- we don't need to prove this at
16 this point." The evidence was coming in very well. We had
17 proven the scheme to defraud. We had proven the identity
18 theft. We had Vipin testifying. We had other people,
19 Mr. Mannava testifying. We didn't need to prove the dollar
20 amount until sentencing became an issue in front of
21 Judge Russell, and then he could make that finding beyond a
22 much lower standard. And we didn't have to prove it as an
23 element of the crime.

24 Q. As of the date of the search warrant, what evidence did
25 you have of criminal intent other than the dollar value

1 analysis?

2 A. What his employees were telling us.

3 Q. His former employees?

4 A. Yes.

5 Q. And did you have claims data substantiating their
6 testimony?

7 A. Yeah. The best we could at that time, we corroborated
8 what a number of different employees and former employees were
9 saying.

10 Q. Did you have undercover surveillance corroborating --

11 A. Yes.

12 Q. -- criminal intent?

13 A. Yes.

14 Q. Now, Ms. Wilkinson, if you'll turn to the binder that's in
15 front of you that doesn't have a cover on it.

16 A. The big one?

17 MS. FARBER: And if I can have put up Exhibit 42,
18 please.

19 BY MS. FARBER:

20 Q. And turn to Tab 42.

21 A. Okay. I have it in front of me.

22 Q. Ms. Wilkinson, do you see that cover email that is
23 Plaintiff's Exhibit 42?

24 A. From Ms. Arnold?

25 Q. The one below it, from Jeremy Dykes.

1 A. And I'm in -- just to be sure, I'm in Plaintiff's
2 Exhibit 42?

3 Q. Yes. And there should be an email below Pam Arnold's
4 email from Jeremy Dykes.

5 A. It's dated May 17th --

6 Q. Yes, ma'am.

7 A. -- 2013?

8 Q. Yes.

9 A. I see it.

10 Q. This is Plaintiff's Exhibit 42. And here's this -- here's
11 this cover email. Okay. Did you ever see Jeremy Dykes's --
12 well, let me show you the spreadsheet that's attached.

13 Have you seen this before?

14 A. I've seen so many things that look like -- I'm not
15 100 percent positive.

16 Q. Well, let me back up and ask you a more general question,
17 Ms. Wilkinson. Does it make sense in this case, in determining
18 whether Mr. Annappareddy committed fraud to combine every
19 single drug of every single dosage and add them all up and see
20 what number you get?

21 A. No.

22 Q. And why doesn't that make sense?

23 A. Because Mr. Annappareddy was operating a pharmacy, part of
24 which did some business, right. So he was dispensing
25 medication to customers, right. The issue was whether or not

1 he was doing automatic refills and the people were not getting
2 them. So the question at that point becomes if you have -- if
3 you're expensing 100, you know, Tylenol, and you billed for a
4 thousand as if you dispensed a thousand Tylenol, does it matter
5 at all that you have Advil and all these other drugs when
6 you're billing for Tylenol and you don't have enough pills to
7 support what you billed for? That just makes zero sense.

8 You have to -- you have to -- you have to bill what you're
9 selling or what you claim that you're selling, you have to have
10 the inventory to support that, right.

11 If you are selling -- you know, dispensing Tylenol, you
12 have to have the pills to expense the Tylenol. It doesn't
13 matter if you have 10 million Advil in your pharmacy. It just
14 doesn't make any sense. You --

15 Q. So in other -- I'm sorry Ms. Wilkinson.

16 A. I'm just saying, you have to have the pills that you say
17 you are -- and most importantly, at the time that you're doing
18 it, right. So if you get a thousand pills a month later, and
19 you go, "Oh, but I had a thousand pills a month later," you're
20 supposed to be dispensing them at the time you say you're
21 dispensing them. And, to me, that was the bottom line to all
22 of this.

23 Q. So, in other words, was it important to look at each drug
24 and each dosage separately?

25 A. Of course.

1 Q. Now, you talked a little bit about your review of the
2 search warrant affidavit on your direct examination; do you
3 recall that?

4 A. Yes.

5 Q. And you mentioned that part of what you did was review the
6 affidavit for probable cause; is that right?

7 A. Yes.

8 Q. And what does a review of the affidavit for probable cause
9 entail?

10 A. We try to put ourselves in the position of the reviewing
11 judge, who I believe was Judge Sullivan here, so that when he
12 reads it, not only does it look nice and is rightly formatted,
13 because our federal judges insist on that as well, and that,
14 you know, there's no spelling errors and all that kind of
15 stuff, but that it has information to believe that a judge will
16 sign it because there's probable cause to believe a crime was
17 committed.

18 And that, even most importantly, that what we are looking
19 to seize in that attachment A or B, whatever we called it in
20 this search warrant, that we have evidence as to each of the
21 things and for the time frame that we want to seize it.

22 So, for example, you want to make sure if you're going to
23 seize their computers, that you've put information in there
24 about how computers were used to commit the fraud. If you want
25 to look for signature logs and delivery logs, you want to put

1 why we have probable cause to be able to look at that to
2 determine whether...

3 So we are looking for not -- does it read as if, you know,
4 supporting what you say you're asking for and what you're
5 looking to search for.

6 Q. How many search warrant affidavits have you reviewed in
7 your time as an AUSA?

8 A. Again, I would say hundreds, maybe even thousands.

9 Q. Does a search warrant affidavit have to include every fact
10 that is known to the investigation team?

11 A. Of course not. And I believe it says that in the
12 affidavit.

13 Q. Did the team meet to discuss the affidavit?

14 A. Yes.

15 Q. How frequently?

16 A. I don't recall. But certainly, we met to discuss the
17 affidavit. We met to discuss the operation; meaning at the
18 time, we were going to ask the judge to review it and that we
19 were going to execute it.

20 Q. Did you have more than one meeting to discuss the
21 affidavit?

22 A. I'm certain we did.

23 Q. Now, some of the prescription evidence in the affidavit is
24 from 2011. Is that stale evidence in this case?

25 A. Well, Judge Sullivan certainly didn't think it was stale.

1 But as a general proposition, when a company like this is
2 committing an ongoing scheme to defraud or there's probable
3 cause to believe that they did, even if the crime had ended in
4 2011, and we were looking at 2013, and there's information in
5 the affidavit that the judge can review that shows that the
6 company is required and would probably keep those type of
7 records back from 2011, it would not be stale. We just have to
8 show that in the affidavit, right, that this is an ongoing
9 business, that it's the type of business that would keep and
10 retain records related to federal billing, insurance company
11 billing, patient information, such as a pharmacy, then even if
12 all the crime and criminal activity stopped in 2011, it would
13 not be stale in 2013 if we could prove those documents would
14 still be there.

15 Q. Did you have concerns about Lisa Ridolfi's credibility?

16 A. I never believed that she was not telling us the truth.
17 But I always take with a grain of salt whatever a witness tells
18 you, right. I am always listening for holes, right, because
19 you want to make sure that they're telling the truth.

20 Q. Why weren't you concerned about whether she was telling
21 the truth?

22 A. Well, it was -- it was supportive of what other people
23 were saying. It was cross-corroborative of what our *qui tam*
24 relator was saying, eventually what other witnesses were
25 saying, what cooperators were saying, what Mr. Patel said.

1 What -- it just was corroborated.

2 Q. Now, which Pharmacare store had the most fraudulent
3 activity of all of the Pharmacare stores?

4 A. I want to say Plumtree.

5 Q. Was that the store Lisa Ridolfi worked?

6 A. I believe so.

7 Q. So did it ever occur to you that maybe Ms. Ridolfi was the
8 person who was committing all this fraud?

9 A. No.

10 Q. Why not?

11 A. Because I met her, and I saw -- I saw no evidence of
12 motive or why she would ever want to do that.

13 Q. And did you have evidence of motive for Mr. Annappareddy
14 committing this fraud?

15 A. Yes. Of course. Yes. He's the one making all the money.

16 Q. Now, I'd like you to take a look at Plaintiff's
17 Exhibit 50, which is in that same -- that same Plaintiff's
18 exhibit binder that's unmarked at the front.

19 MS. FARBER: And, Your Honor, these are text messages
20 between Pam Arnold and Lisa Ridolfi.

21 THE COURT: Ms. Farber, let me say, we're approaching
22 two hours this morning, we need to get the court reporter a
23 break. Can we break here, or are you right in the middle of
24 this?

25 MS. FARBER: This would be a good time to take a

1 break. There's not much more, but we should break.

2 **THE COURT:** All right. Let's take a 15-minute recess.

3 **THE CLERK:** All rise. This Honorable Court is now in
4 recess.

5 (Whereupon, a recess was taken from 10:53 a.m. to
6 11:06 a.m.)

7 **THE CLERK:** All rise. This Honorable Court resumes in
8 session.

9 **THE COURT:** Be seated.

10 Please continue, Ms. Farber.

11 **BY MS. FARBER:**

12 **Q.** Ms. Wilkinson, what, if any, instructions did Lisa Ridolfi
13 receive about communicating with Pam Arnold?

14 **A.** To keep in touch with her, to let her know what was going
15 on. I tried to streamline it so she was the only person that
16 Lisa would have -- Ms. Ridolfi would have communications with.
17 That -- you know, essentially to just do her job and report
18 what she was seeing.

19 **Q.** Was it understood that text messages between Lisa and Pam
20 Arnold were being saved?

21 **A.** Yes, I believe so.

22 **Q.** Now, I'd like to direct your attention to Plaintiff's
23 Exhibit 137. I'm not sure if that's in your unmarked binder
24 there.

25 **MS. FARBER:** Plaintiff Counsel, has that binder been

1 updated?

2 **THE WITNESS:** 137?

3 **BY MS. FARBER:**

4 **Q.** Yes. Do you see a tab 137 in the unmarked black binder?

5 **A.** It ends in 124.

6 **Q.** Okay. I will hand you a copy now.

7 **A.** Like, toward the first page, sorry.

8 **Q.** That's okay.

9 All right. I'm showing you what's been entered into
10 evidence as Plaintiff's Exhibit 137.

11 **A.** Okay.

12 **Q.** The document is Bates-stamped USFRAUD5232301.

13 Now, take a moment to look at this document, and then
14 please tell us what's going on here.

15 **A.** It appears to me that at some point -- and I do have a
16 recollection of this -- that -- to go back for a minute.

17 Ms. Ridolfi had questions about her role in all of this and her
18 exposure and all that. And I, as I do in many cases involving
19 working informant like this or a cooperating witness, suggest
20 that she have her own counsel because --

21 **MR. GREENBERG:** Your Honor, I have to object that this
22 is inadmissible hearsay from Ms. Ridolfi.

23 **THE COURT:** Aren't we going to hear from Ms. Arnold
24 later?

25 **MR. GREENBERG:** We already have heard from Ms. Arnold.

1 **THE COURT:** I'm sorry, we've heard about this already
2 from another witness.

3 **MS. FARBER:** Yes, Your Honor, that's correct.
4 Ms. Wilkinson is the sender of the email dated Monday July 1st,
5 2013. So we have heard from Pam Arnold, and now we are --

6 **THE COURT:** Well, I'll let it in for what it's worth
7 and what she knows about it. Go ahead.

8 Overruled.

9 **BY MS. FARBER:**

10 **Q.** Please continue.

11 **A.** That, at some point, it became clear that Ms. Ridolfi
12 would be served with her own counsel because we can't advise
13 her about things. We're not her lawyer. And so I know that
14 Mr. White was appointed by the court to represent her. And I
15 have a recollection of her expressing frustration at not being
16 able to get ahold of Mr. White, and, at some point, told her to
17 tell the judge if she wasn't hearing from her lawyer, since the
18 court is the ones that appoint and pay for the attorneys, to
19 let the Court know about what was going on. And that's what
20 happened here.

21 **Q.** What did you mean when you said concerns about her
22 exposure?

23 **A.** Well, every -- everybody that was working at a company
24 like Pharmacare where the allegations were that the company was
25 engaging in a widespread fraud and might have knowledge of it

1 and at some point even assisted in it had criminal exposure.

2 Q. Now, I'd like to show you the second page of Exhibit 137,
3 if you'll turn to that page. This is a handwritten letter from
4 Lisa Ridolfi to Judge Sullivan dated July 1st, 2013.

5 Do you see that?

6 A. Yes.

7 Q. Now, take a moment to look at this letter, and then let me
8 know if this letter affects your assessment of Lisa Ridolfi's
9 credibility.

10 A. No.

11 Q. And why not?

12 A. To me, this letter is -- the only unusual aspect is that I
13 am seeing it from the witness, as opposed to the witness just
14 letting the judge know what's going on with her attorney.

15 But people have questions about the criminal justice
16 system all the time who aren't familiar with it. That's why
17 they have a lawyer, to be able to answer those questions. It
18 doesn't mean that they're not telling the truth or that -- it
19 doesn't have any significance of that. They're just in an
20 unusual world, and it's scary, and it's -- it happens in almost
21 every case where I have a working informant where they just
22 want someone to tell them what's going on for them, not -- you
23 know, not the prosecutor, not the agent, just for them.

24 Q. Did you have any concerns about Dennis Tokofsky, the
25 relator's credibility in this case?

1 A. Not at all.

2 Q. Why not?

3 A. Because I met him, and I prepared him, and I -- he was
4 clear, and he didn't exaggerate or minimize. He was
5 straightforward in what he advised us, he --

6 MR. GREENBERG: Your Honor, I'm going to object that
7 this is getting into post-indictment evidence after-acquired.
8 I don't think the witness met with Mr. Tokofsky before sometime
9 after July 2013.

10 THE COURT: You do need to confine your interactions
11 with him to preindictment or pre affidavit.

12 THE WITNESS: Oh, I'm sorry Your Honor, was that the
13 question? I'm sorry.

14 BY MS. FARBER:

15 Q. No, that was my fault, Ms. Wilkinson. I did not confine
16 my questions. That was my fault.

17 Based on the investigation at the time of the search
18 warrant, did you have any concerns about Dennis Tokofsky's
19 credibility?

20 A. No. I'm not sure if I met him prior or not to the
21 indictment, but I do know that my colleagues had interviewed
22 him.

23 Q. And the information that he provided, was that
24 corroborated?

25 A. I believed it was.

1 Q. Regarding the damages analysis, did you understand that
2 number to be a preliminary number or a final number?

3 A. It was a very preliminary number.

4 Q. Did you have any concerns about putting a preliminary
5 number into a search warrant affidavit?

6 A. No. As long as we articulated, which we did using words
7 such as "approximate" or "at the stage that we are," or
8 whatever other words that's similar to approximating how much
9 drugs go through a drug conspiracy, it's our best estimate.
10 Which, by the way, is what a judge can use in sentencing a
11 person, too, the best estimate of what the possible loss is.

12 Q. Without evidence of dollar loss, could you still have
13 pursued a search warrant?

14 A. Yes.

15 Q. And why is that?

16 A. Because we had a number of witnesses telling us that
17 Mr. Annappareddy was committing a fraud on a number of federal
18 government programs and private insurers, and they had been
19 corroborated. We do drug cases where we don't have drugs, and
20 we do a probable cause, you know. It's -- what's important is
21 what the people and the employees are saying and if it's
22 corroborated.

23 MS. FARBER: Court's indulgence.

24 (Counsel conferring.)

25 BY MS. FARBER:

1 Q. Ms. Wilkinson, did you pursue charges against someone
2 named Vipin Patel?

3 A. I did.

4 Q. And why did you do that?

5 A. Because he -- at the time, he was the person closest to
6 Mr. Annappareddy in terms of his role and what he was doing,
7 that he participated in the crime, and he was willing to
8 cooperate and all that.

9 THE WITNESS: But he had to accept responsibility, in
10 my view, Your Honor, for the role that he played in all of
11 this.

12 BY MS. FARBER:

13 Q. Who is Pragna Patel?

14 A. His wife.

15 Q. And is she also known as Ami?

16 A. That is my recollection.

17 Q. And is that spelled A-M-I?

18 A. That's my recollection.

19 Q. Did you ever tell Vipin Patel that the only way he would
20 be allowed to see his dying father would be if he pleaded
21 guilty in a criminal case?

22 A. I have no recollection of telling him that.

23 Q. Is that something you would do?

24 A. I would never say it like that.

25 Q. Would you allow a witness to go see a relative in India

1 while they're under an indictment?

2 A. I can't imagine being -- doing that. Or even having the
3 ability to do that.

4 Q. Why not?

5 A. Because I needed to have control over his person, and if
6 he went to India, I would not.

7 Q. You'd lose jurisdiction?

8 A. I'd lose jurisdiction over him.

9 Q. And did Vipin Patel cooperate with the criminal
10 investigation?

11 A. He did.

12 Q. How did he cooperate?

13 A. He proffered and testified against Mr. Annappareddy.

14 Q. How many times did he make a proffer to the government?

15 A. I don't recall exactly, but I'm sure I met with him many
16 times.

17 Q. And how long were these meetings, approximately?

18 A. I'm certain they were hours.

19 Q. And so for each of these multiple hours-long meetings,
20 Mr. Patel was providing information about Mr. Annappareddy's
21 criminal scheme?

22 A. Yes. And he was represented by the public defender's
23 office and, specifically, Ms. Oyer, who is a very reputable,
24 good defense attorney.

25 Q. I'm showing you -- I'm putting on the projector what's

1 been entered into evidence as Defense Exhibit 67.

2 A. Yes.

3 Q. And this'll be Tab 67 in the binder with the label on it.
4 So you've got a binder that has a cover. And it'll be Tab 67
5 in that binder.

6 A. I can read it on here too, as well.

7 Q. Sure.

8 If you'd like to independently flip through, you know
9 where to find it.

10 What is this document that I've put on the projector
11 that's Defense Exhibit 67?

12 A. Did you say Exhibit 57?

13 Q. Sixty-seven.

14 A. Sixty-seven. Now, this binder doesn't go that far, so I
15 will look at the -- and I don't -- it's Mr. Patel's -- it
16 appears to be Mr. Patel's plea agreement. I see my supervisor,
17 who was then the first assistant, Mr. Shenning's [ph] initials
18 at the top left-hand corner, approving it.

19 Q. Now, I'm going to direct your attention to -- this is the
20 page that has at the top a header that says "Page 8 of 12."

21 Do you see that?

22 A. I do.

23 Q. And this is -- do you see where it says "Stipulated Facts
24 United States v. Vipinkumar Patel"?

25 A. Yes.

1 Q. And these stipulated facts last for about five pages, I'll
2 just quickly flip through them. That's page 1.

3 A. I recall them being lengthy. That was my practice.

4 MR. GREENBERG: Your Honor, I'm going to object on the
5 grounds that the date on this long postdates the indictment.

6 MS. FARBER: Your Honor, they called Vipin Patel as a
7 witness, and Vipin -- well, I'm happy to put a longer objection
8 on the record without the witness --

9 THE COURT: My ruling on the motion *in limine* did
10 leave the door open for post-indictment evidence regarding
11 credibility, and I think that's what we're going into now.

12 MS. FARBER: Yes, Your Honor.

13 THE COURT: I would overrule the objection.

14 MS. FARBER: Thank you.

15 BY MS. FARBER:

16 Q. Ms. Wilkinson, it's about five pages of stipulated
17 facts --

18 A. Yes.

19 Q. -- does that sound accurate?

20 A. Yes.

21 Q. Where did those facts come from?

22 A. Well, Mr. Patel would tell the judge subsequently at the
23 plea that that's what happened, right, the facts as he knew it.
24 And also from the investigation.

25 Q. Was 1803 Eloise Lane a location that was searched in this

1 case?

2 A. Yes.

3 MR. GREENBERG: I'm going to object on the grounds
4 previously stated, and also that this is inadmissible hearsay,
5 and also the question is leading.

6 THE COURT: No, that is post affidavit.

7 MS. FARBER: Your Honor, I'm happy to respond. May
8 the witness leave the stand so I can respond.

9 THE COURT: All right. Step outside, if you would,
10 please, just a moment.

11 THE WITNESS: In the vestibule?

12 MS. FARBER: Yes, in the vestibule, thank you,
13 Ms. Wilkinson.

14 (Witness exits.)

15 MS. FARBER: Your Honor, this does go to credibility.
16 Plaintiff called Dr. Vaidya as a witness, and Dr. Vaidya very
17 clearly testified that Mr. Annappareddy followed all policies
18 and procedures. And then he also testified that storing drugs
19 on a toilet at one's home would not be consistent with
20 following policies and procedures.

21 What I'm going to introduce through this witness are
22 photos from a search of one of Mr. Annappareddy's homes, 1803
23 Eloise Lane, which show drugs stored on a toilet at a
24 residential home. So Plaintiff has opened the door to this
25 testimony through Vaidya. This goes to his credibility and to

1 the weight the Court should give that testimony.

2 **THE COURT:** It goes to the credibility of the
3 pharmacist, Dr. Vaidya?

4 **MS. FARBER:** Correct, Your Honor. Dr. Vaidya
5 testified exactly to this topic.

6 **THE COURT:** Mr. Greenberg?

7 **MR. GREENBERG:** Well, Your Honor, first of all, they
8 had an opportunity when Vipin Patel was here to question him
9 about this without now offering what's inadmissible hearsay to
10 try to do it.

11 Second of all, I don't really understand how this
12 post-indictment purported information that Patel was coerced
13 into providing somehow affects the credibility of Dr. Vaidya
14 about earlier events. It doesn't make any sense.

15 Our testimony from Vipin Patel, I believe, was limited to
16 his awareness of events on or through July 23rd, 2013. There
17 is no evidence that anyone ever asked Mr. Annappareddy to store
18 anything or let alone prescriptions at 1803 Eloise Lane. 1803
19 Eloise Lane was searched in August 2013. It's fruit of the
20 poisonous tree because the information that led to that came
21 only because of the Lating affidavit and the wrongful
22 indictment.

23 There's all kinds of reasons why this is inadmissible.

24 And this is, I think, the second time there's been talk
25 about drugs on the toilet. And I believe that both

1 mischaracterizes the evidence and is purportedly based on
2 after-acquired evidence.

3 And I would ask that this be stopped.

4 **MS. FARBER:** Your Honor, if I may respond.

5 Plaintiff's counsel is correct that this is the second
6 time this has come up, and that's exactly why the door has been
7 opened. They chose to call Dr. Vaidya to provide testimony
8 about Mr. Annappareddy's supposedly stellar ability to follow
9 pharmacy procedures. And Dr. Vaidya testified that storing
10 drugs on a toilet in one's home does not follow policies and
11 procedures. Evidence that that's exactly what Mr. Annappareddy
12 did is directly relevant to their own witness who they chose to
13 call.

14 And I don't think -- if I'm permitted to make an offer of
15 proof and show the Court the photo, I don't think that there is
16 any question that it's ambiguous about what's on the toilet.

17 **THE COURT:** Mr. Greenberg also said it's going to come
18 in through hearsay.

19 **MS. FARBER:** Your Honor, respectfully, I'm not sure
20 how the photos of 1803 Eloise Lane are hearsay. I'm wondering
21 if perhaps Plaintiff's counsel was referring to the plea
22 agreement, which is already in evidence. Maybe I'm
23 misunderstanding. I'm just not sure how photos are hearsay.

24 **THE COURT:** Well, it appears to me that the earlier
25 witness did give an opinion about the Plaintiff's following

1 correct procedures to the letter, and he was asked about
2 storing pharmacy products in a -- near a toilet or something.
3 So I'm going to overrule the objection and allow it only, only
4 insofar as it affects the credibility of the earlier witness we
5 heard from, not for substantive evidence or proof of lack of
6 probable cause, or anything such as that. Only insofar as it
7 affects credibility of an earlier witness called by the
8 Plaintiff.

9 **MR. GREENBERG:** Your Honor, just a couple of points to
10 respond, and I would hope that Your Honor would give these
11 considerations because it's an important issue.

12 First of all, Dr. Vaidya was called as a rebuttal witness.

13 **THE COURT:** Well, you can impeach a rebuttal witness.

14 **MR. GREENBERG:** Okay. But they didn't do that when he
15 was on the stand.

16 And second, this thing about drugs on a toilet --

17 **THE COURT:** You don't have to impeach a person when
18 he's on the stand, necessarily. If you want to hold back and
19 bring in a later witness, you can do that.

20 **MR. GREENBERG:** All right. Okay.

21 Now, second, there is no evidence that anyone ever, ever
22 said that Mr. Annappareddy was aware of drugs being put in
23 Eloise Lane or that they were there because of anything
24 Mr. Annappareddy said or did. There's no evidence of that.

25 This plea agreement, moreover, is inadmissible hearsay.

1 It's an out-of-court statement by Vipin Patel. He testified
2 about it, they could have asked him about it when he was on the
3 stand, but they didn't. And now it's an out-of-court
4 statement, he's unavailable, and so it cannot be used for the
5 truth. And the --

6 **THE COURT:** I'm lost. Did your side introduce the
7 plea agreement?

8 **MR. GREENBERG:** No.

9 **MS. FARBER:** Your Honor, the plea agreement did come
10 in during Vipin Patel's testimony. It's already an exhibit.
11 And Mr. Patel was questioned extensively about the contents of
12 the statement of facts contained in Defense Exhibit 67, so
13 that's not a correct representation.

14 **MR. GREENBERG:** I don't think that's correct,
15 actually, and there's multiple things that I need to correct
16 now.

17 First of all, it's a Government exhibit, it's Government's
18 Exhibit 67. I don't believe -- I certainly don't think it was
19 admitted or --

20 **THE CLERK:** For the record, it is admitted.

21 **MR. GREENBERG:** It is committed?

22 **THE CLERK:** Yes. As of June 5th.

23 **MR. GREENBERG:** All right. Oh, that's right. It was
24 admitted because they crossed Vipin Patel on it. So that's --
25 that must have been how it happened. Now I recall.

1 So that's different now from using this statement with
2 this witness. Because, I mean, Vipin Patel was in court at the
3 time this was shown to him, so that was a different use of the
4 statement.

5 But there's a sort of a more fundamental problem, and
6 that's that Dr. Vaidya was talking about what he knew about
7 Mr. Annappareddy up -- before Pharmacare was created and
8 through July 23rd, 2013, I believe. I don't think he was
9 getting into all this sort of post-indictment, after-acquired
10 stuff.

11 Also, the second thing -- I said the thing that I was
12 saying came up the second time was not what counsel just said a
13 couple minutes ago, it was this thing about drugs on the
14 toilet. And it bears repeating there is no evidence that that
15 is accurate. Moreover, it is post-indictment, after-acquired
16 Eloise Lane August 2013. And, most fundamentally, no one has
17 testified, and there's no evidence that Mr. Annappareddy had
18 anything to do with that.

19 **MS. FARBER:** Your Honor, it feels like we're
20 conflating two things here. The first is Vipin's plea
21 agreement and statement of facts, which are already in
22 evidence, which he was cross-examined about, and which, the
23 Court might recall, Mr. Patel's testimony that he made all of
24 that up or that the Government wrote -- you know, that wasn't
25 his words, it wasn't his information, you know, that he just

1 signed something that was handed to him.

2 So that -- the previous testimony that Ms. Wilkinson gave
3 that that information came from Mr. Patel is relevant to
4 Mr. Patel's own testimony about that, which Plaintiffs opened
5 the door to.

6 The second issue is the photo from 1803 Eloise Lane, which
7 Plaintiff also opened the door to in Dr. Vaidya's testimony
8 about Mr. Annappareddy's ability to follow policies and
9 procedures, and, specifically, whether leaving drugs on a
10 toilet at home would be a violation of procedure. Now, whether
11 that's what happened or not, that -- this goes to weight and
12 not admissibility. Mr. Annappareddy will be taking the stand.
13 We're all looking forward to his testimony. And, certainly, he
14 will have an ability to explain the drugs on the toilet, Your
15 Honor.

16 (Counsel conferring.)

17 **THE COURT:** Am I not correct that Eloise Lane was
18 owned by the Plaintiff?

19 **MS. FARBER:** Yes, Your Honor.

20 **MR. GREENBERG:** Actually, I believe it was owned by
21 his wife. But that's, I guess, not really of any moment. What
22 is of -- for moment, though, is that the reason we called
23 rebuttal witnesses out of the order is because of the European
24 vacation of Ms. Wilkinson and because of the European vacation
25 of Ms. Pascale. They wouldn't be able to be doing this but for

1 the European vacations. If we called our rebuttal witnesses at
2 the time they're ordinarily called in the trial, this couldn't
3 happen because they wouldn't be able to have a preview of our
4 rebuttal case while they're putting on their direct case. For
5 that reason alone, this should be shut down.

6 **MS. FARBER:** The Court ruled that those witnesses were
7 not properly rebuttal witnesses, that they were substantive
8 witness. But as the Court has said, we're permitted to impeach
9 these witnesses, and this goes -- Plaintiff has sprung these
10 rebuttal witnesses on us at the last minute. And,
11 unfortunately for them, those rebuttal witnesses have opened
12 several doors related to their credibility for which the
13 evidence is relevant to that. And the Court can certainly note
14 that it's limiting its consideration of this evidence to those
15 witnesses' credibility, but this is -- Plaintiffs made this
16 bed, and now they have to lay in it.

17 **MR. GREENBERG:** So, Your Honor, as Your Honor knows
18 from being a judge for 37 years and being a very experienced
19 attorney before that, the defendant in a civil case doesn't get
20 rebuttal. They don't get rebuttal. We were forced to call
21 these witnesses out of order because of the scheduling issues
22 caused by the European vacations of this witness,
23 Sandra Wilkinson, and Cathy Pascale.

24 What's going on here now is they would never have had a
25 chance to do this but for those European vacations and but for

1 us being forced to call witnesses out of order. Respectfully,
2 I believe counsel is misperceiving the Court's ruling on the
3 nature of Dr. Vaidya's testimony and the nature of Vipin
4 Patel's testimony.

5 But putting that aside, the mere fact that they are now
6 trying to put on a rebuttal case themselves in their direct in
7 a civil case is a huge problem, and we object to it.

8 **THE COURT:** All right. After hearing extensive debate
9 on this issue, I'm going to sustain the objection. The
10 evidence is already in. I can consider it for what it's worth
11 after hearing earlier testimony. So the objection is
12 sustained.

13 Bring the witness back.

14 (Witness enters.)

15 **THE COURT:** Having said that, this subject matter
16 might be fair game for cross-examination when the Plaintiff
17 takes the stand, I want to make that clear.

18 **MS. FARBER:** Yes, Your Honor.

19 **THE COURT:** All right.

20 **MS. FARBER:** Thank you.

21 **BY MS. FARBER:**

22 **Q.** Ms. Wilkinson, did Agent Robert Mosley mislead you at any
23 point before the search warrant affidavit?

24 **A.** I have no information that Robert misled me about
25 anything.

1 **Q.** And did Agent Maura Lating mislead you prior to the search
2 warrant affidavit?

3 **A.** I have no reason to believe that Agent Lating tried to or
4 ever did mislead me.

5 **MS. FARBER:** No further questions.

6 **THE COURT:** All right.

7 Any additional questioning?

8 **MR. GREENBERG:** No, Your Honor.

9 Thank you, Ms. Wilkinson, for your time.

10 **THE COURT:** Thank you. You're excused.

11 **THE WITNESS:** Thank you for allowing me to go on
12 vacation last week. I appreciate that, Your Honor.

13 (Witness exits.)

14 **THE COURT:** All right. Next witness.

15 **MR. GREENBERG:** Your Honor, I believe the next witness
16 is Cathy Pascale, who, I think, is still in Europe and is
17 coming back tomorrow evening. And I believe -- our
18 understanding is that she's not available until Wednesday.

19 **THE COURT:** We flew back up here yesterday on the
20 representation that you were going to call this mystery
21 witness, and he's not going to be called now.

22 So we got a two-day gap here?

23 **MR. GREENBERG:** Well, Your Honor --

24 **THE COURT:** When will she be here?

25 **MR. PHELPS:** Ms. Pascale lands at midnight on the

1 13th. I've told her that you want her here the afternoon of
2 the 14th. That's what I texted her after we had that exchange
3 and she said she would be here the afternoon of the 14th.

4 **THE COURT:** You can have her here Wednesday afternoon?

5 **MR. PHELPS:** Yes, Your Honor.

6 **THE COURT:** So we've got two and a half day gap.

7 Two days from today, yeah.

8 **MR. GREENBERG:** Your Honor --

9 **THE COURT:** It would have been nice to know that that
10 witness wasn't going to be called before we got on a plane to
11 fly back to Baltimore.

12 Let's put it on the record, this other witness, I've
13 forgotten his name, he's not going to be called at all?

14 **MR. FLOWERS:** No, he's not going to be called at all.
15 It was the witness Wayne Dyke. It was, as the Court will
16 recall, you know, we tried not to even tell the Court about
17 that we were going to call this witness because we were in flux
18 about, you know, whether we would call him, how that witness
19 would fit in this case. As the Court is well aware, you know,
20 by virtue of the Court's writing and talking about the
21 *My Cousin Vinny* movie, that, you know, things change quickly
22 and you've got to be able to change your plan kind of in mid --
23 in mid-plan.

24 **THE COURT:** I agree with you. No problem there. But
25 I've just got to say, it doesn't seem like, to me, there's been

1 hardly any surprises in this trial. We had a three- to
2 four-week criminal trial. We had copious discovery here. The
3 OPR investigation interviewed all these people, and transcripts
4 were prepared. I think both sides are over emphasizing the
5 element of surprise here.

6 So she'll be here Wednesday right after lunch?

7 **MR. PHELPS:** I will tell her to do that Your Honor.
8 Would you like -- should we say 1:00 p.m.?

9 **THE COURT:** Let's say 1:00. How long do you think
10 she'll be on the stand? Who's going to call her?

11 **MR. GREENBERG:** Your Honor, we will call her
12 initially. I would imagine that the length of her direct would
13 be similar, if not very similar, to Ms. Wilkinson's.

14 **THE COURT:** So we can finish her Wednesday afternoon
15 probably?

16 **MR. PHELPS:** Yes, I think so, Your Honor.

17 **THE COURT:** So then that gives us two days for the
18 Plaintiff.

19 **MR. GREENBERG:** Yes, Your Honor. And I would think we
20 can at least probably start the Plaintiff's direct on
21 Wednesday.

22 **THE COURT:** All right. We're still on track to finish
23 by Friday, in other words?

24 **MR. GREENBERG:** I think so, Your Honor.

25 **THE COURT:** So let's just get on record, the only two

1 witnesses remaining are Ms. Pascale and Mr. Annappareddy, and
2 neither side foresees any additional rebuttal witnesses beyond
3 that?

4 **MR. PHELPS:** None from the Government, Your Honor.

5 **MR. GREENBERG:** That is correct, Your Honor.

6 **THE COURT:** Well, the brief we got late last night
7 from the Plaintiff suggested you were squeezing up against the
8 time deadline I gave you, but you're not going to need all
9 those. If we finish Friday, you're not going to need anything
10 like that, right? Am I missing something?

11 The Plaintiff is sitting on 19 hours. I told you I'd
12 think about giving you credit for the testimony of Mr. McCray
13 that I did not consider since it was post indictment. We'll
14 just ballpark that at about an hour. I don't think it was
15 actually an hour. But I'll give you that hour back. So you've
16 got 12 hours to go. And if we come back on Wednesday, that
17 should be plenty of time to finish.

18 **MR. FLOWERS:** I agree with Your Honor. And I just
19 want to be kind of clear with Your Honor's ruling on
20 Mr. Ernest McCray. The ruling was that the stuff that is kind
21 of post September 23rd, 2013, the Court is not going to
22 consider?

23 **THE COURT:** Right.

24 **MR. FLOWERS:** But, obviously, the stuff that was
25 before that --

1 **THE COURT:** Everything before that is certainly in,
2 yes. Maybe I wasn't clear. I just draw the line at the date
3 of the affidavit.

4 **MR. FLOWERS:** Right. I think you probably were clear,
5 and it's probably a user error, my fault.

6 **THE COURT:** And in that time, the things I disallow
7 will not be counted against the Plaintiff's time.

8 **MR. FLOWERS:** Very well, Your Honor.

9 **MR. PHELPS:** Your Honor, if I could ask a question
10 about closing arguments. You had referenced previously
11 openings, you thought, should be no more than an hour, but
12 probably less. If Your Honor has any expectations for how long
13 closings could be.

14 **THE COURT:** We could certainly justify more than an
15 hour, I just don't know if we could get it in Friday or not.
16 There's a local rule that says it's an hour, but I can waive
17 that. You need more than an hour?

18 **MR. PHELPS:** Your Honor, we'll do whatever you want,
19 we'll tailor it. We just need to know that when we prep, if
20 we're running over an hour, whether or not that's going to be
21 acceptable.

22 **THE COURT:** Well, it would help to know, if you know
23 how much time we'll have available Friday after the testimony.

24 Mr. Greenberg, how long do you think the Plaintiff will
25 need?

1 **MR. GREENBERG:** Well, Your Honor, it's a little bit
2 difficult right now because the Government has indicated
3 repeatedly, including just with this last witness, that they
4 plan to ask Mr. Annappareddy about post-indictment events,
5 including Eloise Lane. That would be a whole mini trial itself
6 if we get into Eloise Lane. So that would require a lengthy
7 redirect, probably involving a number of spreadsheets to show
8 why the Eloise Lane Ryan analysis is false. So it's really --
9 we really are in sort of a hamstrung position where we can't
10 predict right now.

11 If you're asking specifically about closing --

12 **THE COURT:** That's what I'm asking about.

13 **MR. GREENBERG:** Okay. I would say no more than -- I
14 would say I can't imagine, based on what we know now, it would
15 be more than an hour.

16 **MR. PHELPS:** We'll do our best to be similar.

17 **THE COURT:** All right. We'll count on one hour.

18 And understand, if we do not get to the closing arguments
19 on Friday, I don't see a problem with doing it by Zoom when I'm
20 back in Columbia. Testimony is different, I need to observe
21 the demeanor of the witness and hear them firsthand. Argument
22 by counsel is a lot different, in my view. So just be aware
23 that that may happen if we run all day Friday. We don't fly
24 back until Saturday morning, so we can go as late as necessary
25 on Friday.

1 **MR. GREENBERG:** We would, respectfully, ask to get the
2 closings in on Friday. I believe lead Government counsel has a
3 trial coming up. And, you know, the gap in time between --

4 **THE COURT:** Well, I would much prefer, even if we have
5 to work very late Friday.

6 **MR. GREENBERG:** I think that would be best, Your
7 Honor. And respectfully, this issue about, you know,
8 impeachment through post-indictment evidence, I think there's
9 got to be some line drawn about how much they can do that.

10 **THE COURT:** Well, let's just take it up as it comes.
11 I'm aware of your serious concerns about that.

12 **MR. GREENBERG:** Thank you, Your Honor.

13 **MR. PHELPS:** Your Honor, we will have a response to
14 the motion that was filed yesterday, we will have it filed by
15 the end of the day today.

16 **THE COURT:** Well, actually, all the testimony
17 mentioned in the memorandum, I have allowed in. The only thing
18 it asked for was more time over and above 35 hours. But it
19 doesn't -- it looks like that's a moot point to me. Am I
20 missing something here or not?

21 Mr. Greenberg, all the stuff you complained about and
22 suggested that it should come in, it came in, right?

23 **MR. GREENBERG:** Well, I'll actually let Mr. Flowers
24 speak to this issue.

25 **MR. FLOWERS:** Yeah, I mean, it certainly came in. And

1 if the Court's ruling is that it all comes in --

2 **THE COURT:** Whether that was rebuttal, proper
3 rebuttal, or direct evidence, it doesn't really matter. It's
4 in, and you don't need the time, I don't think.

5 **MR. FLOWERS:** Well, I think that's correct, given
6 where we are. My concern is, however, if the Court determines
7 that it is not proper rebuttal and the Government then argues
8 they were surprised, I'm concerned about when that happens how
9 that's going to look on appeals. So our position is that this
10 is clearly rebuttal evidence, that there was no surprise, and
11 for all the reasons that we have outlined in the pleading that
12 we filed yesterday, this is appropriate rebuttal and that there
13 was no surprise to the Government, Your Honor.

14 **THE COURT:** Do you want to brief it or not?

15 **MR. PHELPS:** Your Honor, the brief is basically
16 written at this point. I mean, we've objected to every one of
17 these witness. We still object to them. We're happy to file a
18 brief that conforms to our ongoing objection to any of these
19 witnesses being called. We understand --

20 **THE COURT:** You say they weren't rebuttal, they were
21 substantive witnesses.

22 **MR. PHELPS:** They were substantive witnesses --

23 **THE COURT:** But could the Plaintiff not have called
24 them as substantive witnesses? I mean, the problem was you
25 didn't know who they were going to be, right?

1 **MR. PHELPS:** Correct, Your Honor. Not on the witness
2 list, never disclosed. I mean, Vipin and Pragna Patel
3 testified on less than 24-hours' notice, Your Honor.

4 **THE COURT:** Maybe you better write a brief then, to be
5 safe. Let's do that.

6 **MS. FARBER:** Your Honor, may I ask a point of
7 clarification. The discussion just now related to whether all
8 of the statements in Plaintiff's brief, all of the testimony in
9 Plaintiff's rebuttal brief had been admitted, one of the
10 statements in that brief is Robert Mosley's statement at the
11 grand jury to Mr. McCray that what we wanted, what he was
12 pursuing was justice, and we personally love that statement,
13 but that is a post-indictment statement. Is that in evidence?
14 Can we use that?

15 **THE COURT:** Was it not objected to when it came in?

16 **MS. FARBER:** Well, Your Honor, it occurred after the
17 indictment.

18 **THE COURT:** I understand.

19 **MS. FARBER:** And Plaintiff believes it goes to malice,
20 and we believe it establishes the opposite. So the question is
21 just whether that is --

22 **THE COURT:** Well, let me think about that, and we can
23 discuss that when the case is argued. We can think about that.
24 All right?

25 **MR. FLOWERS:** And just, as the Court is thinking about

1 that, again, we join hands with the Government on that. We
2 believe that evidence should come in. And, quite frankly, I
3 think it's easier if the Court would just allow all of
4 Mr. McCray's testimony to come in. The key part that was post
5 indictment, the key part was really that discussion that he had
6 with Robert Mosley in the elevator. And I understand what the
7 Government's position is on that. We obviously have a
8 different position on that, and the Court will decide who's
9 correct with respect to Mr. Mosley's malice. Perhaps that's an
10 issue that we don't have to debate, we don't have to litigate
11 because if they're on the same page as you come in with us,
12 again, that's something that we can move on from.

13 My only suggestions then, is if we're going to let that
14 piece of Ernest Mosley's [sic] testimony in post indictment, we
15 might as well let it all in. And let us be able to argue about
16 the malice, how it goes to both Lating's malice and it also
17 goes to Mosley's malice.

18 **MS. FARBER:** And that's the issue that the Court drew,
19 is that once we let everything in, then we -- that's already
20 well on record from the other day.

21 So I just wanted to clarify just that one statement
22 because that's in Plaintiff's brief, and I thought I heard
23 discussion about how all of the statements that were mentioned,
24 all of the testimony mentioned --

25 **THE COURT:** Well, I might have overstated it then.

1 MS. FARBER: Okay.

2 THE COURT: I just read the memo this morning. My law
3 clerk read it last night. It was filed 22 minutes to midnight.
4 He read it last night. I read it this morning, hurriedly.

5 MS. FARBER: Yes.

6 THE COURT: While we're here, let's talk about the
7 parallel 1983 case. I think a good idea, to just be thinking
8 ahead, Mr. Greenberg suggested that necessarily the juries have
9 got to be educated about a lot of concepts that I knew about
10 before this trial started. And I've done this once before in a
11 case where I asked the lawyers to come up with a glossary of
12 terms to give the jury, a definition of what a *qui tam* action
13 is and maybe a description of what MEDIC is. And I would think
14 that good lawyers should be able to sit down and come to a
15 correct statement of some of these terms. There may not be
16 that many, but I'd like for you to be thinking about that.

17 MR. GREENBERG: Your Honor, I think that's a fantastic
18 idea, and we would certainly join hands with Ms. Shiff to do
19 that. I think that would move things along.

20 THE COURT: And the second thing, I'd like --

21 MS. SHIFF: Your Honor --

22 THE COURT: Ms. Shiff, do you want to comment?

23 MS. SHIFF: Your Honor, we would be in agreement, I
24 think assuming we can -- I think the definitions are pretty
25 standard and we could, hopefully, get, whether it's 10 or 20

1 terms, defined for the jury, and perhaps even distribute it or
2 make it available to them so that they have it for -- as a
3 reference material.

4 **THE COURT:** All right. Very good.

5 And the second thing is, I would like some prediction as
6 to what evidence will come in at a second jury trial over and
7 above what we've heard in this case? Will there be any new
8 witnesses called I've not heard from? I'm not going to hold
9 you to it. But do you foresee that happening?

10 **MR. GREENBERG:** Your Honor, I think it would be
11 virtually all of the same witnesses, but we would potentially
12 call a small number of additional witnesses. I don't think
13 they would be lengthy, and I don't think they would affect the
14 overall time of the trial in any significant way based on what
15 I -- the information I have right now.

16 And -- yeah.

17 **MS. SHIFF:** Sure. Your Honor, I don't foresee at this
18 time calling any different witnesses, but it may depend on what
19 the Plaintiff -- who the Plaintiff adds as an additional
20 witness. I would foresee the witness list actually becoming
21 shorter.

22 **THE COURT:** Ms. Shiff, will you be alone or will you
23 have cocounsel with you?

24 **MS. SHIFF:** Mr. Chasen will be with me.

25 **MR. GREENBERG:** Your Honor, I would just add,

1 actually, I think we may be able to avoid calling -- I mean --
2 well, it would depend on Ms. Shiff, obviously, because they
3 weren't our witness. But folks like Jeremy Dykes,
4 Judge DiPietro, I don't know that we would even need them. So
5 I think that would probably shorten the case. There will be
6 some time needed --

7 **THE COURT:** Well, you were the one last time that said
8 it's going to be a lot longer.

9 **MR. GREENBERG:** Oh, no, I -- well, I was talking
10 about -- because there is going to be -- yes, and I stand by
11 that, Your Honor. I mean, there is going to be additional time
12 needed to educate the jury. I do think the glossary that Your
13 Honor suggested will reduce that time, hopefully in a very
14 significant way, and I think that's a great idea. But, still,
15 the jury trial will necessarily have to be longer because no
16 juror is going to have four-years plus experience in this case.

17 **THE COURT:** One other thing to think about might be
18 a -- I tried a securities fraud case once where this suit was
19 against the inside directors, the outside directors, the
20 auditing firm, the CEO, and we had a pie chart of the major
21 actors. We actually blew it up on a 4-by-8 sheet that the
22 parties could use in opening statements to talk about the
23 different defendants because there were different liability
24 issues, some had a scienter requirement, some did not, and it
25 just kind of gave a mental picture of who all the major players

1 were. Would that be helpful hearing in terms of the
2 investigators, the prosecutors, and so forth?

3 **MR. GREENBERG:** We certainly think that would be very
4 helpful, and we'll be willing to work with Ms. Shiff on that.
5 And I think there's a way to do it in a, hopefully, neutral
6 fashion that will certainly help things along.

7 **THE COURT:** All right. It was actually color-coded
8 blocks with names and functions on it.

9 **MS. SHIFF:** Your Honor, I think we could come up with
10 key -- like, some kind of key players' guide for the jury in
11 terms of who was employed by whom and what the specific titles
12 were and during what period, perhaps, even.

13 **THE COURT:** Just one more thing, to the extent we have
14 scheduling problems with witnesses like we've had in this case,
15 we do have testimony from all the people here, and if they're
16 not available next time -- I'm talking about anybody, both
17 parties, if they're not available because they're in the
18 hospital or in Europe or something, we've got the testimony and
19 the cross-examination from this trial, so I just serve notice
20 that we shouldn't have any gaps in the next trial.

21 **MS. SHIFF:** Sure. Your Honor, my only concern would
22 be I haven't had the opportunity, Ms. Arnold hadn't had the
23 opportunity to cross-examine witnesses in this trial. Although
24 the interest is similar, what I would do might be different
25 from what the United States' counsel has done. And she would

1 like the opportunity.

2 **THE COURT:** I think Rule 804 on prior testimony of an
3 unavailable witness directs us to somewhat of a similar motive
4 and inclination to cross-examine or examine.

5 **MS. SHIFF:** Sure. Your Honor, there's also additional
6 counts against Ms. Arnold that haven't been addressed in this
7 trial, and those witnesses haven't been necessarily questioned
8 on direct or cross-examine -- cross-examined. So I don't know
9 at this -- I'm hoping it's not an issue, Your Honor.

10 **THE COURT:** I'm not ruling on anything today, I'm just
11 thinking out loud.

12 **MS. SHIFF:** I understand.

13 And my suggestion would be that perhaps before a trial
14 date is scheduled, that we talk with witnesses and make sure
15 there is availability of witnesses as of whenever we schedule
16 the trial so that we can move forward in the most expeditious
17 manner. Because these witnesses, it's a written transcript,
18 it's not -- there's no video. It would be -- it's potentially
19 problematic. So ideally, it would be best if we could schedule
20 the trial in a way that would enable the necessary witnesses to
21 be here.

22 And that would benefit everybody because the Plaintiff can
23 present his case, all the direct comes first, then whatever
24 Ms. Arnold chooses to present, and then rebuttal, should there
25 be a need for any.

1 **THE COURT:** What about the issue of bifurcating the
2 issues of liability and damages and getting a verdict on
3 liability first, and then going into testimony on damages?

4 **MS. SHIFF:** Your Honor, we would not -- well, we --
5 first, we hope we don't get to that point, let me say that for
6 the record. However, assuming -- knowing that that is a
7 possibility, I would think that the damage evidence would take
8 a day or less.

9 **THE COURT:** I think y'all told me that before.

10 **MS. SHIFF:** Yes. So I don't know, and I would -- it
11 would most likely, presumably, be the Plaintiff and the experts
12 who did not testify in this case on damages, but the positions
13 may be different for trial because a jury may need to hear from
14 live witnesses in terms of establishing credibility,
15 methodology, those types of things.

16 **MR. GREENBERG:** Your Honor, if I may just briefly
17 respond. I understand Your Honor is not making any decisions
18 on the evidence that's going to come in today. But I would
19 just like to point out that, you know, some of these folks,
20 like Laurie Gutberlet, she's had her deposition taken, she came
21 and traveled here to testify, we paid for her to be here. And
22 the Government counsel -- the Government and Defendant Arnold
23 have both an opportunity and similar motive. They have been
24 coordinating throughout this case. I believe, although I'm not
25 sure, that they have a joint defense agreement. They've

1 certainly been coordinating as far as all indications, and I
2 don't know that there's, at least for some witness, any
3 daylight between them in what they would ask or what they would
4 do.

5 I also would say, Your Honor, respectfully, we would ask
6 that a date be set for the jury trial. We think that, again,
7 Mr. Annappareddy has been waiting nearly 10 years for justice,
8 and we respectfully would ask that -- I know the Court is busy
9 for the rest of the summer, at least that's what I gathered
10 from some of the statements, but if there could be a trial
11 scheduled for, at least, say, September, that would be -- you
12 know, we would ask for that.

13 **THE COURT:** Well, go back to what you said before
14 about they've had a chance to cross-examine all the witnesses.
15 For the prior testimony to come in under the 804 hearsay
16 exception, the witness has to be unavailable.

17 **MR. GREENBERG:** Oh, yes, Your Honor, correct. And so
18 if they want to bring, say, Laurie Gutberlet back for a third
19 round of examination, yes, they can certainly do that. But --
20 yes.

21 **MS. SHIFF:** Your Honor, if I may?

22 **THE COURT:** Go ahead.

23 **MS. SHIFF:** I just would like the Court to also
24 consider the issue that was raised by the Court last week with
25 regard to the appeal, if there is an appeal --

1 **THE COURT:** I was about to raise that issue now.

2 **MS. SHIFF:** If there is an appeal, Your Honor, it may
3 depend on what issues are appealed, because specific issues
4 have to be cited to the Fourth Circuit before briefing occurs.
5 So that issue -- it may be premature before we know what issues
6 are being presented, but certainly -- presumably, this Court
7 doesn't want to redo the bench trial, but it certainly wouldn't
8 be to have a second jury trial in this case. And if any issue
9 is presented to the Fourth Circuit that might impact the
10 outcome of the jury trial, it's probably in the interest of
11 judicial economy.

12 Ms. Arnold would also like to have this matter resolved.
13 I know we've heard lots of arguments about the Plaintiffs had
14 this ongoing for as long as it's been ongoing for him. But
15 Ms. Arnold has been a Defendant in this civil matter for just
16 under five years. She's an individual. She is sued in her
17 individual capacity. She is personally at risk for the
18 judgment here. She would like to have it resolved.

19 However, I do have her consent to represent to the Court
20 that she would prefer to have -- she doesn't want to have a
21 second jury trial. She has to take off of work in order to
22 come -- travel to Maryland for one jury trial. She doesn't
23 want to have to do that twice. And --

24 **THE COURT:** My law clerk and I discussed it, we
25 haven't researched it at all, the question of whether there

1 would be any issue preclusion if we let an appeal go up and
2 waited on that appeal to try the jury trial, but there
3 certainly could be some evidentiary rulings that could be
4 decided by the Fourth Circuit that might carry over to the
5 second. Even if it was not issued preclusion, there could be
6 some evidentiary issues that might come into both trials.

7 **MR. GREENBERG:** Your Honor, I think that's,
8 respectfully, unlikely, unless there are evidentiary issues
9 that I might not be seeing, and that's because there's no
10 malice element for the claims against Defendant Arnold.

11 With respect to the concept of an appeal, we believe that
12 would be fundamentally unfair to Mr. Annappareddy for the
13 reasons I stated before. And also, because the reason that
14 witnesses' memories are fading. And we saw this this morning
15 in realtime with Ms. Wilkinson. She claimed not to remember
16 things that she did remember in her deposition. I didn't get
17 into all of it in the interest of time. But she actually
18 testified in her deposition that her memory is not as good and
19 wasn't as good in August of 2022 as it was six months earlier.
20 So that's a problem.

21 And you know, okay, maybe the appeal would be done in a
22 year, maybe not. It might be longer. We just don't know. And
23 this is a case that we believe ought to go to trial
24 expeditiously and without an appeal delaying things and causing
25 witnesses' memories to fade even further.

1 **THE COURT:** I'll take all that into consideration.

2 **MS. SHIFF:** Thank you, Your Honor.

3 **THE COURT:** Mr. Phelps, to go back, you are going to
4 file a brief in response to what we got last night?

5 **MR. PHELPS:** We'll have it filed by the end of the
6 day, Your Honor.

7 **THE COURT:** All right. Do you want to come back and
8 argue tomorrow or do it Wednesday morning? Probably Wednesday
9 morning.

10 **MR. PHELPS:** Wednesday morning is fine Your Honor. We
11 don't presently have any witnesses Wednesday morning.

12 **THE COURT:** I'm just thinking 11:30 or something
13 Wednesday. You said she'll be here at 1:00?

14 **MR. PHELPS:** We'll have her here at 1:00, yes, Your
15 Honor.

16 **THE COURT:** Do you want to take an early lunch and
17 come in at 12:30 to argue the motion?

18 **MR. PHELPS:** Okay.

19 **THE COURT:** We might need more than 30 minutes.

20 **MR. PHELPS:** You know, Your Honor, I don't have
21 anything new to say, quite frankly, about this issue.
22 Everything that we're putting in our brief is just basically
23 distinguishing the few cases that they cite. I think Your
24 Honor understands our position. They're not rebuttal. They're
25 being dropped on us at the last minute. That's our case. I

1 don't have anything else to say.

2 **THE COURT:** But, I say again, to the extent it all
3 depends on -- if it determines a time counted against the
4 Plaintiff, I think it's going to be a moot point, probably.

5 **MR. PHELPS:** Your Honor, I don't relate it to time in
6 the way that the Court or perhaps the Plaintiff does --

7 **THE COURT:** Right. You just said a surprise
8 witness --

9 **MR. PHELPS:** Correct.

10 **THE COURT:** -- was not true rebuttal.

11 **MR. PHELPS:** Correct.

12 **THE COURT:** All right. Well, I'll let you brief that.
13 I'll let you brief that.

14 **MR. GREENBERG:** Your Honor, just one point that we may
15 not have put in our brief that I think is worth noting. Three
16 of the four witnesses were named in our initial disclosures,
17 both Vipin Patel and Pragna Patel, and Ernest McCray. In
18 addition, our brief did mention that Mr. Annappareddy, in his
19 deposition testimony, mentioned Dr. Vaidya. He also mentioned
20 Ernest McCray.

21 But maybe more fundamentally, the whole point of surprise
22 doesn't apply to rebuttal witness, because they're rebuttal
23 witnesses, and so they don't have to be on the witness list.

24 **THE COURT:** All right. Let me say one more thing.
25 There's been a lot said about requiring Mr. Annappareddy to

1 prove his innocence and back and forth about that. My law
2 clerk pointed out that the very first sentence of the complaint
3 says the Plaintiff is an innocent man. And then in the
4 prosecution's opening statement they rejoined on that and said
5 "You're not going to hear from a single witness to say the
6 Plaintiff is innocent." I think both sides need to just
7 drop -- back off of that. Guilt or innocence is not in front
8 of me today. It's not in front of me. Mr. Annappareddy
9 doesn't have to prove he's innocent. It's not an element of
10 the claim here, and we don't need to have any semantical
11 arguments about that terminology.

12 Also, the memorandum filed last night said that the
13 Government's case got out of control by suggesting that the
14 Plaintiff, Mr. Annappareddy, was a horrible employer. We did a
15 word search, those terms don't appear in any of the testimony.
16 There was some testimony about him yelling at employees and
17 things such as that. But I don't think it's correct to say
18 that I allowed in evidence about his character as a horrible
19 employer.

20 **MR. FLOWERS:** Yeah, Your Honor, and forgive me for the
21 imprecision. It really is that -- the allegation is that
22 Mr. Annappareddy was housing slaves. Do a word search on that,
23 that certainly comes up. We should be more precise about that.
24 And I do think one can say if one is a slave master, one is a
25 horrible employer. But that's where that came from, Your

1 Honor.

2 **THE COURT:** All right. One more thing, I don't want
3 to misspeak, what is the correct -- Mid Eastern employees is
4 not correct. Some of his employees were from his home country,
5 they shared a common bond in respect, but what's the correct
6 terminology I should use?

7 **MR. FLOWERS:** Indian.

8 **THE COURT:** Indian. Simple enough.

9 **MR. FLOWERS:** And, quite frankly, we'll argue this in
10 closing, it's what Agent Lating, Robert Mosley, Lisa Ridolfi,
11 Dennis Tokofsky, they --

12 **THE COURT:** They all used that term. I understand.

13 **MR. FLOWERS:** They knew better, and they should have
14 done better.

15 **THE COURT:** All right.

16 One more thing before we break up. Mr. Annappareddy's
17 status in this country, we don't know if a hold has been put on
18 it by anybody or why. Is there anything I can do to unleash
19 that so he can go to a funeral if he needs to? Has the
20 Plaintiff checked to see what the problem is?

21 **MR. GREENBERG:** Your Honor, the Plaintiff has --

22 (Counsel conferring.)

23 **THE COURT:** Yes, sir.

24 **MR. GREENBERG:** To the extent that Your Honor can
25 direct USCIS to issue Mr. Annappareddy a Green Card, his

1 application has been on hold for over -- well over a decade and
2 maybe even two decades.

3 **THE COURT:** But you have challenged it
4 administratively?

5 **MR. GREENBERG:** Your Honor, I believe, my
6 understanding is he has immigration counsel who is challenging
7 administratively. But to the extent that Your Honor can step
8 in and expedite this, that would certainly be --

9 **THE COURT:** I don't know -- that might be beyond my
10 jurisdiction. I was just curious. Let me think about that.

11 **MR. GREENBERG:** And just one more point on that, Your
12 Honor, just to kind of highlight what's happened.

13 Mr. Annappareddy's wife has gotten a Green Card years ago,
14 while Mr. Annappareddy is still waiting. The only difference
15 we can see is that Mr. Annappareddy was maliciously prosecuted,
16 wrongfully charged, wrongfully convicted, and his wife was not.

17 **THE COURT:** All right. Anything else we can take up
18 while you're all here?

19 **MR. PHELPS:** No, Your Honor. Thank you.

20 **THE COURT:** My law clerk and I have visited all the
21 museums in Baltimore, already. We've got a baseball game to go
22 to still.

23 **MR. GREENBERG:** I was going to suggest that, Your
24 Honor, the Orioles are decent --

25 **THE COURT:** I think it's Thursday and Friday.

1 All right. We've got to decide when to come back.

2 MR. GREENBERG: Your Honor, on that note, I would
3 respectfully suggest that we start earlier than 12:30, just
4 because I think maybe you've already covered this but --

5 THE COURT: Yeah. Who knows what might come up.
6 Let's come in at 10:00.

7 MR. GREENBERG: I think that makes sense.

8 THE COURT: 10:00 Wednesday. Very good. We'll be in
9 recess until 10:00 this Wednesday.

10 THE CLERK: All rise. This Honorable Court is in
11 recess.

12 (Hearing concluded at 12:05 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 12th day of June 2023.

Ronda J. Thomas

Ronda J. Thomas, RMR, CRR
Federal Official Reporter

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